



## EXTRAORDINARY

## PART II—Section 3

## PUBLISHED BY AUTHORITY

No. 69] NEW DELHI, SATURDAY, MARCH 21, 1953

## ELECTION COMMISSION, INDIA

## NOTIFICATION

New Delhi, the 17th March 1953

S.R.O. 581.—Whereas the election of Sardar Dara Singh, as a member of the Legislative Assembly of the State of Patiala and East Punjab States Union (now dissolved) from the Bhadson Constituency of that Assembly, has been called in question by two election petitions duly presented under Part VI of the Representation of the People Act, 1951, by Shri Mathra Das, son of Shri Banta Mal, Advocate, High Court, Patiala, PEPSU, Village Amloh, Tehsil Amloh, District Fatehgarh Sahib, Shri Inder Singh, son of Shri Mehtab Singh Biswedhar, Village Nanoke, Tehsil Nabha, Thana Bhadson, District Patiala, Shri Fateh Singh, son of Shri Kahan Singh Biswedhar, Village Jatiwal, Tehsil Nabha, Thana Bhadson, District Patiala and by Sardar Shiv Dev Singh, son of Sardar Partap Singh, Ward No. 3, Nabha City, District Patiala;

AND WHEREAS the Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act for the trial of the said petitions has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order in the Election Petition filed by Shri Mathra Das, Shri Inder Singh and Shri Fateh Singh to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order.

## BEFORE THE ELECTION TRIBUNAL, PATIALA

V. B. Sarnate—*Chairman.*

Rachunandan Saran—*Member.*

E. M. Joshi—*Member.*

## ELECTION PETITION No. 70 OF 1952

*Petitioners:*

1. Shri Mathra Das, s/o Shri Banta Mal, Advocate, High Court, Patiala, Pepsu, resident village Amloh, Tehsil Amloh, district Fatehgarh Sahib.
2. Inder Singh, s/o Mehtab Singh Biswedhar, Elector No. 5 Supplementary list in village Nanoke, Tehsil Nabha, Thana Bhadson, district Patiala.
3. Fateh Singh, s/o Kahan Singh Biswedhar, Elector No. 21 in village Jatiwal, Tehsil Nabha, Thana Bhadson, district Patiala.

*Versus**Respondents:*

1. S. Dara Singh, Advocate, High Court, Patiala, s/o S. Bishan Singh, village Salan Jiwansingh Wala, Tehsil Amloh, district Fatehgarh Sahib.

2. Shiv Dev Singh, s/o S. Partap Singh, House No. 551, Ward No. 3, Seva Bhavan, Nabha City, district Patiala.
3. Lala Hans Raj, s/o L. Anant Ram Mahajan Agarwal, village Amloh, district Fatehgarh Sahib.

#### ORDER DELIVERED ON 5TH MARCH 1953

The petitioner No. 1 and the three respondents had filed nomination papers for election to the PEPSU Legislative Assembly from the Bhadson Constituency. The Returning Officer rejected the nominations of the petitioner Mathra Dass and the respondent No. 3 Hans Raj with the result that the respondents 1 and 2 only remained in the field. Respondent No. 1 S. Dara Singh was eventually declared returned, defeating the respondent No. 2 S. Shivdev Singh.

2. S. Shivdev Singh has filed a separate Election Petition for avoiding this election on grounds of alleged commission of certain corrupt practices by the successful candidate S. Dara Singh. In this petition which is made by Mathra Das conjointly with two other persons, who are registered electors in the constituency, the petitioners seek a declaration that the election is void on the ground of improper rejection of the nomination of Mathra Dass.

3. The respondent No. 1, the returned candidate above referred to, opposes the petition. The issues arising for determination in view of the pleas taken by him are the following:—

1. (a) Is there any misjoinder of the petitioners in this petition and is the petition in the present form not maintainable by any of the petitioners?
- (b) Is there a necessity for amending the petition to get over the above objection and if so, what amendment should be ordered to be made?
2. Does Respondent No. 1 prove any collusion between the petitioners and Respondent No. 2 Shri Shiv Dev Singh and if this is proved, does it afford a sufficient ground for dismissing the petition?
3. (a) Was omission of the Electoral area, (in which Petitioner No. 1 was enrolled as voter) (in the Nomination Paper a technical and unsubstantial defect) and was the Returning Officer bound to see it corrected after making a summary enquiry?
- (b) Was the Nomination of Petitioner No. 1 rejected improperly?
- (c) Was the result of the election materially affected by the improper rejection of the nomination of Petitioner No. 1 Mathra Dass?
4. Is the Election of Respondent No. 1 liable to be declared void for improper rejection of the nomination of the Petitioner No. 1? If so, on the petition of which of the three petitioners should declaration be made?
5. Was the security deposit under Section 117 of the Representation of People Act, 1951, made by Shri Shiv Dev Singh on behalf of the petitioners? If so, does it render this petition unmaintainable?
6. What is the proper order to be made in this petition under Sections 98 and 99 of the Representation of the Peoples Act, 1951?
7. Is it necessary to stay disposal of this petition till completion of the enquiry in the petition of Shri Shivdev Singh (No. 90 of 1952) against Respondent No. 1?

4. Issues I, II, V and VII are considered first and may be disposed of briefly. Section 81 of the Representation of the People Act, 1951, permits any candidate at election or any elector to make an election petition. Mathra Das as candidate was entitled to make the petition and each of the petitioners 2 and 3 could also have separately filed the petitions challenging the election on the identical grounds as Mathra Das did. Upon such several petitions the same questions of fact and law would have arisen for determination. By order 1 R 1 Civil Procedure Code which is applicable to the trial of election petitions the petitioners intending to file such separate petition could also join together in one petition. The motive which may have promoted them to join in the same petition does not make for misjoinder nor can it affect the merits of the petition.

5. Mathra Das has explained that the petitioners 2 and 3 Inder Singh and Fateh Singh approached him to say that they were proposing to challenge the election on the ground of the improper rejection of his (Mathra Dass's) nomination, and as he himself was contemplating the making of a petition he proposed to them

to join with him. It may, however, well be as has been suggested on behalf of S. Dara Singh that the petitioners 2 and 3 have joined in the petition at the instance of S. Shivdev Singh the defeated candidate. S. Shivdev Singh having himself raised objection to the nomination of Mathra Dass before the Returning Officer may not have found it convenient to take that ground himself to challenge the election and yet he did not want to leave out any possible ground on which the election could be called in question. Therefore, he devised that some other person should take up the ground of improper rejection of nomination and for that purpose wanted a separate petition to be made by the petitioners 2 and 3 who, we have no doubt, are more his men than Mathra Dass's. S. Shivdev Singh reserved to himself the ground of the corrupt and illegal practices at the election for his separate petition and he has taken them in his petition No. 90. Since Mathra Dass was himself contemplating making his own petition on the ground of improper rejection of his nomination it was found more convenient to induce him to accept these two persons as co-petitioners with him. Such arrangement could easily be acceptable to both. For S. Shivdev Singh it ensured that the challenge to the election on the ground of improper rejection of nomination would not be given up by a withdrawal of the petition or its indifferent prosecution by Mathra Dass, should he at any time think of doing such a thing under the influence of S. Dara Singh who now, after the election, has come in the position of a minister in the State Government. The possibility of such influence being brought to bear by inducements within the power of a State Minister was not to be ruled out altogether. For Mathra Das the acceptance of S. Shivdev Singh's two men as co-petitioners brought with it an assurance of every kind of help in men, money and advice from S. Shivdev Singh as might be needed for the efficient prosecution of this petition against a powerful opponent like a State Minister.

6. When we say all this we do not mean to suggest that Mathra Dass in making this petition is a mere tool in the hands of S. Shivdev Singh. Nor do we think that the petition has been engineered entirely by Shivdev Singh. We are also not prepared to go so far as to infer that before the election, there was any kind of understanding to say nothing of collusion between Mathra Das and S. Shivdev Singh regarding Mathra Das's candidature. This is not suggested also by S. Dara Singh, though he has offered an explanation from the witness-box why it was that S. Shivdev Singh had raised an objection before the Returning Officer to the nomination of Mathra Das and for sustaining that objection had specially brought a lawyer from Karnal. The explanation is that S. Shivdev Singh did this with a great foresight that in case he was unsuccessful in the election he might be equipped with a ground of improper rejection of a candidate's nomination for successfully challenging the election. We do not think that this reading of S. Shivdev Singh's thoughts can be accepted to have been correct to any extent. If anything, the explanation only shows that in the view of S. Dara Singh, who is a lawyer and a judge of considerable standing and experience, the objection taken to the nomination was really not worth the raising, and that the rejection of the nomination, though on an improper ground, was brought about with a sinister purpose. We have, however, the undisputed fact that the objection was not only taken but also vehemently pressed even after the nominations of S. Dara Singh and S. Shivdev Singh had been accepted by the Returning Officer. Far from inferring any sort of collusion from this circumstance it may well be used for inferring that the objection was raised in order to eliminate, if possible, Mathra Dass from the election because it was apprehended that he might prove an inconvenient rival. This is indeed what Mathra Das himself suggests, and he says that the objection was not from S. Shivdev Singh alone but from S. Dara Singh as well. However that may be, we are satisfied that there was no kind of understanding or collusion between Mathra Das and S. Shivdev Singh prior to the election, and if they have come together and seem to be friendly now, it is because they share the common grievance of finding S. Dara Singh returned. Indeed the allegations on behalf of S. Dara Singh are only about the collusion from the time of taking legal advice for filing the election petition and in making the security deposit under Section 117 of the Representation of the People Act, 1951.

7. We do not find it necessary to refer to some circumstances to which one of the advocates on behalf of S. Dara Singh drew our attention to impress on us that in all probability the amount of the security deposit was paid by S. Shivdev Singh, who sent it to the Reserve Bank of India by the hand of petitioner No. 3 Fateh Singh. Mathra Das states that it was he himself who sent his own money through Fateh Singh for this purpose. He also explains that though it happens that the same lawyers who are prosecuting S. Shivdev Singh's petition have been appearing for him on this petition, it is because he has consulted them and paid their fees independently. We do not think that any thing is to be made of these circumstances or of an other, that Mathra Dass or his witnesses have been transported to and from Patiala for attending before this Tribunal in a vehicle belonging

to S. Shivdev Singh. From all such facts, even if we accept all that was said on behalf of S. Dara Singh to be correct, we may only infer that S. Shivdev Singh is the man now behind the curtain whose hand is supporting Mathra Dass in the prosecution of this petition. That does not, however, help in sustaining the objections taken to the maintainability of the petition. We are not referred to any provision nor are we aware of any, under which we could find this to be a case of misjoinder of petitioners or could find the petition to be not maintainable because the amount of security deposit came not out of the pockets of any of the petitioners but from the coffers of the defeated candidate. We thus rule out the objections which are the subject matter of issues I, II and V.

3. On issue VII we find that there is no reason to stay the determination of this petition till completion of the enquiry in S. Shivdev Singh's petition or to consolidate the two. The two petitions are based on entirely independent grounds and there is nothing common in the two, not even the relief, the one in this case being the declaration that the election is wholly void while in the other, it is the declaration that the election of the returned candidate is void—though the latter would be included in the former.

9. Issue No. 3(a) and (b).—Mathra Dass though he was offering as a candidate for election from the Bhadson Constituency was registered as an elector in the Amloh-Payal Constituency of this State. He had presented two nomination papers serially numbered as 242 and 243. Both these papers were rejected by the Returning Officer on 3rd December 1951 by an order which we reproduce below *in extenso*:—

"This nomination paper (Serial No. 242) regarding Mathra Dass came up for consideration today again. Both the parties have been heard. This candidate against column No. 8 gives his serial number and only the Halqa Patwar, Amloh. He does not mention the sub-division that is the village in which the serial number occurs. Under the circumstances it is very difficult for ordinary voters to know as to in which village of Halqa Patwar, Amloh this number occurs. So is the case with regard to the nomination paper 243. The candidate fails to mention very important information in his nomination papers.

Under the circumstances he has failed sufficiently to comply with the provisions of Section 33 of the Representation of the People Act, 1951. Therefore, the nomination papers are rejected."

10. The contention of the petitioners is that there was no defect at all in the nomination papers, that if there was any, it was merely of a technical character and not substantial, that the Returning Officer, if he was really in doubt, should have satisfied himself on the point by means of a summary inquiry and that in no case was he justified in rejecting the nomination. The Returning Officer has referred to the defect in giving particulars against item 8 only in the two forms and no other defect has been shown to exist. Though we find that there was a slight error in mentioning the particulars in item 8 in the nomination papers, we cannot find that this defect was of a substantial character warranting the rejection of the nomination.

11. Rule 7 of the Representation of the People (Preparation of Electoral Rolls) Rules, 1950, authorises the Electoral Registration Officer to divide a constituency into electoral areas for the purpose of facilitating the preparation of the electoral roll for the constituency, and so much of the roll as relates to an electoral area may be separately prepared. The electoral rolls produced in this case show that under the provisions of this Rule the Amloh-Payal Constituency was divided into Electoral areas, each village constituting a separate electoral area for which a separate electoral roll was prepared. One such electoral area was village or town Amloh, and in the electoral roll of this area the petitioner Mathra Das was registered at No. 804. For land records administration a number of villages are sometimes grouped together and put in charge of a Patwari, such charge being referred to as Halqa Patwar. The Patwari of Amloh was thus in charge of four villages, Amloh, Mangarh, Khanvan and Aladatpur, and his circle of these four villages was known as Halqa Patwar, Amloh. A separate electoral rolls was prepared for each of these villages, but the four separate electoral rolls of these villages Ex. P. 1 to P. 4 were stitched together. The system followed appears to have been to have a composite electoral roll of each Halqa Patwar, since the Patwaris had been put in charge of the preparation of the rolls of all villages in their charge. On the front page of each of these four separate electoral rolls of Halqa Patwar Amloh, the name of the village concerned is stated, but at the top of every other page of the roll of each village the name of the Patwari Circle as 'Halqa Patwar Amloh' is also mentioned along with the name of the village. The first part of

this composite electoral roll is the electoral roll of village or town Amloh, with 1,151 electors on the main list—the name of Mathra Dass petitioner being entered in the main list at serial No. 804. Three supplementary lists were also prepared for Amloh, the number of electors on these supplementary lists being 469, 54 and 5 respectively. The electoral roll of Mangarh has only 84 electors on the main list and only 1 and 2 electors respectively on the two supplementary lists. The electoral roll of Khanyan has only 541 electors on the main list, and the three supplementary lists have only 12, 48 and 1 electors respectively. The electoral roll of village Aladatpur contains in the main list the names of 57 electors and its two supplementary lists have 27 and 3 electors respectively. Thus it will be obvious that serial No. 804 was reached only in the main list of village Amloh and was not reached in the main or supplementary list of any other village of this Halqa Patwar.

12. Item No. 8 of the Nomination Paper required mention of the candidate's serial number in the electoral roll of the constituency in which his name is included, and in both of his nomination papers Mathra Dass mentioned against this item, "No. 804 (Halqa Patwar Amloh) main list." Now Rule 4 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951 provides for the nomination paper and its form is prescribed in Schedule II of these rules. Note No. 6 at the foot of this form lays down that where the electoral roll is sub-divided into parts and separate serial numbers are assigned to the electors in each part, a description of the part in which the name of the person concerned is entered must also be given in item No. 8. Similarly Rule 2(1)(d) of these Rules says that the serial number of an elector in an electoral roll includes such particulars regarding the name or description of the electoral area in reference to which the said electoral roll has been prepared as will identify the entry relating to such elector in that electoral roll. The petitioner attempted alright to mention the electoral area but misdescribed it as Halqa Patwar Amloh this misdescription consisting in writing 'Halqa Patwar' for the word 'village' or 'town' as the electoral area of Amloh would properly be designated. This misdescription may seem to have been only accidental due to the circumstances that at the top of each page of the electoral roll of Amloh the name of the Halqa is also printed. If no manner of description of the electoral area had been attempted to be given, it might have been possible to say that a roving search through the electoral roll of the entire constituency of Amloh-Payal would be necessary in order to find out where the candidate's number '804' is actually entered, in which case it might justifiably have been said that the defect in making the entry against item 8 was substantial in character. With the mention of the name 'Amloh' with no other place of that name in the constituency, the search, if any was necessary, became confined to the electoral rolls of the four villages composed in the Patwar Halqa Amloh and to the main lists of such rolls since the description mentioned "main list" also. Whatever doubt may have been entertained regarding the eligibility and identity of the candidate, to establish which the particulars against item No. 8 are needed, this could be cleared by a mere look at the four lists, without the aid of any further help from the candidate, much less without necessity of any evidence being produced. In the circumstances we can not imagine of a better instance which could be regarded as a "technical defect" than this.

13. Reading the definition of "Serial number of an elector in an electoral roll" as given in Rule 2(1)(d) of the Rules of 1951 and the note 6 in the Nomination Paper it would appear that the object of requiring the mention of the electoral area is only that the entry relating to the elector may be readily traced out in the electoral roll. In the present case the mention of Halqa Patwar Amloh with the serial number of Mathra Dass was sufficient to trace out the entry without much ado in the electoral roll. You have only to pick up the composite electoral roll of this Halqa comprising of four villages which is one booklet, and you can readily get at the entry relating to Mathra Dass because his serial number is to be found only in the main list of village or town Amloh, the other parts of this composite roll being with such smaller number of entries that you have not to think of referring to them at all. On the description given the entry could be seen without any labour and with no chance of any confusion in the matter. Note 6 in the form of nomination paper in providing that "a description of the part (of the electoral roll) in which the name of the person concerned is entered *must be given*", is in our view only directory. If it were intended to be mandatory, the words "shall be given" would have been used. Being merely directory, a failure to comply with it strictly should not render the nomination paper invalid. Substantial compliance of a directory provision is sufficient and as we have shown there has been more than a substantial compliance with the rule in this case. We are fortified in this view by the opinion of the West Bengal Tribunal (Kallimpong Case) Tikaram Sharma V. Lalit Bahadur Kharga published in Gazette of India Extraordinary, dated 15th October 1952, and also by two other cases, E. Pew V. G. E. Gibbon and Wasaba

Singh V Waryam Singh and others, reported at pages 66 and 122 respectively of Sen and Poddar's Indian Election Cases (1935-51).

14. On behalf of the petitioners it is rightly complained that the Returning Officer did not take any steps at all to find out whether there had been substantial compliance or not in giving particulars required by item No. 8 and that he was only too ready and willing to reject the nomination. Sardar Furan Singh, R.W. 20 in his capacity as Deputy Commissioner, Patiala, was the Returning Officer for this Bhadson Constituency and also the Returning Officer of the Patiala Constituency of the House of the People. The area of this House of People Constituency includes the area of the Amloh-Payal Assembly Constituency. The same Returning Officer was thus supposed to have with him the Electoral Roll of the Amloh-Payal Constituency as well in his capacity as Returning Officer of the House of People Constituency. He was thus in a position to satisfy himself under section 33(5) of the Representation of the People Act, 1951, by a reference to that roll on the presentation of Mathra Dass's nomination papers on 24th November 1951 that the name and electoral roll number of Mathra Dass as entered in the nomination papers were entered in the electoral roll of Amloh-Payal. In our view it was incumbent on him to consult that electoral roll which was in his possession. Further he should have got the clerical or technical error in the description of the electoral area corrected then and there. If he did not think it proper to take that trouble, it was in any case incumbent on him to take action under section 33(6) and to require Mathra Dass to produce either a copy of the electoral roll or a certified copy of the relevant entry in the roll. The Returning Officer did nothing of the kind on 24th November 1951 and Mathra Dass cannot be blamed for his complacency that the Returning Officer did not entertain any doubt on this point and was satisfied that the nomination papers had been correctly filled in. The only routine order recorded by the Returning Officer on 24th November 1951, on Mathra Dass's nomination papers was.

"The candidate has been informed that scrutiny would take place on 1st (First) December, 1951, at 10 A.M. in this office."

15. As a matter of abundant caution Mathra Dass had procured a copy of electoral roll entry and the magistrate's certificate of his identity and these he produced before the Returning Officer on 1st December 1951 when this nomination paper was taken up for scrutiny. These came to be produced because as the Returning Officer says on behalf of Shivdev Singh an objection regarding item No. 8 was raised and this be understood as an objection to the identity and eligibility of the candidate. The Returning Officer has noted on these documents the fact of their production on 1st December 1951 but when passing the order of rejection of the nomination on 3rd December 1951, he did not refer to them at all. He fails to comprehend this peculiar attitude of the Returning Officer and can only think that being predetermined to reject the nomination, he was in no mood either to give any chance to Mathra Dass by performing his own duty of making an enquiry as contemplated by section 36(2) of the Representation of the People Act or even to look at the evidence of these copies which he had tendered.

16. The explanation offered by the Returning Officer before us for ignoring the evidence of these two documents is that he did not consider these to be duly certified. Once was a true copy of the relevant entry of the electoral roll of village or town Amloh showing that in this roll Mathra Dass was registered at serial No. 804 and this copy had been attested by Shri Nathu Ram, Magistrate, P.W. 2, who was not only a 1st class Magistrate at Amloh but also the President of the Amloh Small Town Committee. Mathra Dass being a legal practitioner of some importance at Amloh was personally known to this officer, who issued to him a certificate, the other document produced by Mathra Dass, in the following words;

"I know Shri Mathra Dass Vakil s/o L. Banta Mal personally. He is a practising lawyer of this place. There is no other vakil of this name and a parentage in Amloh. His serial No. in the electoral roll of Amloh town is 804."

17. These two documents should have been sufficient to dispel whatever doubt the Returning Officer may have generally felt as to the identity or eligibility of Mathra Dass or as to the possible error of the electoral area due to mention of the words 'Patwar Halqa'. Even so he adjourned the scrutiny proceedings to 3rd December 1951 with this endorsement:—

"No. 8 not clear. For further clarification and to hear objection to come up on the 3rd December, 1951."

And on 3rd December 1951 though nothing was said on the other side regarding proof given by Mathra Dass the nomination was rejected without any thought of the mandatory provisions of section 36(4) the Representation of the People Act, 1951, that the Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character.

18. In his order of rejection the Returning Officer says "the candidate does not mention the sub-division viz. the village in which the serial number occurs and under these circumstances it is very difficult for an ordinary voter to know in which village of Halqa Patwar Amlah, this number occurs." He does not say that he himself felt any difficulty to know in which village of Halqa Patwar Amlah this number occurred. In the scrutiny proceedings the candidate had to satisfy the Returning Officer only and no question of satisfying ordinary voters could arise. His remark that a Halqa Patwar may consist of even as many as 5 or 6 villages, shows that if any inquiry at all was necessary, its scope was quite narrow being directed to a reference to the electoral roll of the few villages of the Patwar Halqa mentioned by the candidate.

19. The Returning Officer's objection to the two documents tendered by Mathra Dass, as he has stated before us is that he did not consider them to be duly certified copies according to rules and this is also argued on behalf of the respondent in support of the order of rejection of the nomination. Obviously any such thing was not present to the mind of the Returning Officer at the time of the scrutiny. In any case, in our opinion he should not have dismissed these documents so summarily. The certificate was in original and there was no question of its being properly certified whatever one may think of its value as evidence. The copy of the entry in the electoral roll was furnished by Shri Nathu Ram a 1st Class Magistrate of Amlah from the electoral roll which was in his custody as the President of the Small Town Committee, Amlah. Objection to its not being a duly certified copy is taken by reference to. Rule 24 of the Representation of the People Rules of 1950, which says that copies of the electoral roll shall be kept in the office of the Electoral Registration Officer of the constituency who will be authorized to allow inspection of the roll to the public and to issue certified copies. It is contended that the Electoral Registration Officer of the Amlah Payal Constituency who is the Tehsildar of Payal was alone competent to issue attested copies which could be deemed to be certified copies under section 76 of the Evidence Act, and therefore the Returning Officer was right in ignoring the copy of the entry attested by Shri Nathu Ram. The petitioner's reply to this is that Rule 24(1) of the Rules of 1950 provides for the keeping of the copies of the electoral roll not only in the office of the Electoral Registration Officer but also at such other place as the State Government may by orders specify, and that the office of Small Town Committee of Amlah was one such other place specified by the order of the Pepsu Government. We are referred to a Circular letter of the Government of Pepsu (Local Self Government Department) copies of which were issued on 26th November 1951 to all the Presidents of the Municipal and Small Town Committees of Pepsu. This required the municipalities to keep the electoral roll of the area within their jurisdiction in the office for information of the public and accordingly the electoral roll of Amlah was in the office of the Small Town Committee, Amlah. The President of the Small Town Committee as an officer in custody of this public document would have authority to issue attested copies of its entries in accordance with Rule No. 24(7) of the Representation of the People Rules of 1950 which would be admissible under section 76 of the Evidence Act. On behalf of the respondent it is pointed out that the copy of the electoral roll was at the office of the Small Town Committee for the limited purpose set forth in the letter of the Pepsu Government and so that body was not authorised to issue a copy of its entry for any other purpose, according to Section 76 of the Evidence Act. Even if this contention of the respondent be accepted the result would only be that the copy not being a certified copy of the electoral roll as contemplated in section 36(7)(a) of the Representation of the People Act, 1951, it could not be treated as conclusive evidence of the candidate's right to stand for election. Even so it would be some evidence of his being a registered elector sufficient for satisfaction of the Returning Officer into acceptance of the nomination. The law does not bar the production of evidence other than conclusive evidence and does not lay down that such other evidence cannot be acted upon. We may refer to the case of Shri Shankar Singh V Thakur Moti Singh (Hammond's Election Cases 1920-35 page 95) in which a certificate from the District Magistrate in terms similar to Shri Nathu Ram's certificate in this case was held to be as good evidence as a certified copy of the electoral roll entry. In this view also the Returning Officer should have accepted this evidence. For all these reasons we think the nomination of Mathra Dass was rejected by the Returning Officer for no adequate reasons.

20. We think that the view taken by us that in this case the defect in stating the particulars in item No. 8 is not one of a substantial character does not run counter to any of the decided cases relied on by the counsel for the respondent. In *Badri Prasad V. Sheo-Dass Daga*, Indian Election Cases Vol. II by Khanna, Page 231, it was held that the omission to specify the description of the sub-division of the electoral roll in which the names of the candidate or his proposer and seconder are entered entails rejection of the nomination paper. The same view was taken in *Malhar, Rao V. Vishnupant*, Indian Election Cases—Sen and Poddar Page 326—*Doabia Vol. I* page 206. In both these cases there was total omission to mention the sub-division. As we have already said if there is no description or indication of the part of the electoral roll when the electoral roll of constituency is divided into numerous parts, the omission would make it difficult to know in which part one is to look for the number stated and a search of the electoral roll of the entire constituency would be necessary. Properly such omission could not be regarded as substantial compliance. These cases are however easily distinguishable from the present case in which there was no total omission and the description given could help locate the part without any difficulty and the electoral roll number could be traced with a trifling attempt at search.

21. In *Brij Bhukhan Lal V. Moti Lal*, I. E. Cases by Khanna Vol. IV Page 1—only the numbers in the Electoral Roll of the candidate, his proposer and seconder had been stated in the nomination form as 846, 1329 and 796 respectively without specifying the sub-divisions [corresponding to 'Parts' used in Note (6) in the form of nomination paper now]. Actually there were 19 territorial sub-divisions of the electoral roll for that constituency each sub-division being designated after the name of the polling station for the area to which it related. In 18 of those sub-divisions the number 846 and 796 appeared and the number 1329 appeared in 15 of them. Thus by reference to the numbers alone it was not possible for the Returning Officer to discover in which sub-division of the electoral roll, the candidate, his proposer and seconder were electors.

22. In *Panna Lal V. Mohan Lal*, Indian Election Cases by Khanna Vol. II Page 227 the candidate had mentioned only his number in the electoral roll as "549 (Ward No. 5)" without mentioning the sub-division. There were 13 sub-divisions in that constituency and several of them had a ward No. 5. The learned commissioners who decided that case rightly observed that it was not the duty of the Returning Officer to search every one of the 13 sub-divisions of the electoral roll to find out in which sub-division this number occurred.

23. In *Panna Lal V. Haridas*, Indian Election Cases by Khanna Vol. IV Page 22 the entries regarding the proposer and seconder were merely "No. 145 Ward 3" and "No. 127—Ward 3". The constituency was the Ambala Division Non-Muhammadan constituency of the Legislative Assembly covering the whole of the Ambala Division. The electoral roll was divided into several parts. It was held that an entry referring to the number of the Ward only was not a substantial compliance to validate the entry because it was difficult for the Returning Officer to identify the proposer and the seconder.

24. It will be observed that all these were cases of total omission to describe the sub-division or part of the Electoral Roll which would have required an elaborate and laborious search by the Returning Officer and this circumstance was the consideration behind the decision in those cases of want of substantial compliance. In the case before us as we have already pointed out there is a description of the part though it is inaccurate and the inaccuracy created no difficulty in readily tracing out the entry of the candidate's number from the electoral roll. All the above cases are thus easily distinguishable from this case.

25. In the *Kalimpong* case—*Tika Ram Sharma V. Lalit Bahadur Kharga* published in the *Gazette of India Extraordinary*, dated 15th October 1932, referred to in para. 13 above the name of the Municipal Ward in which the candidate was registered as elector was noted against item No. 7 as "Kalimpong Constituency—Kalimpong Municipality (Ward No. VI)"—while against item No. 8 the entry was only the number "555". The description "Kalimpong Municipality (Ward No. VI)" should have been added after the number '555' against item No. 8. Further it should have been mentioned that this number was from 'Part A', which was the original roll in which the number was to be found—there being two other parts of the Roll—Part B, Supplementary roll and Part E. 'Further agenda and corrigenda'. These two latter mentioned rolls contained fewer names and were kept stitched up to the original roll. In the circumstances after an elaborate review of the case law, the Tribunal found that there was substantial compliance with the rules regarding the filling up of the nomination form because in spite of the omission of the description of the part of the electoral roll against item No. 8 it was possible to trace out the candidate's



number in the roll without wasting much time and labour. Similarly in the two cases *E. Few V. C. E. Gibbon* and *Wasawa Singh V. Waryam Singh* and others referred to in para. 13 above the view taken was that the rule requiring the name of the sub-division to be mentioned in the nomination form was not mandatory and that it was a question of fact whether or not there has been a substantial compliance with that rule. The following observations in the first mentioned case (at P. 72) are pertinent:—

'If in spite of the total omission to describe the sub-division or inadequate description, a name in a certain roll can be easily located, it must be held in that case that there has been a substantial compliance with the rule and the nomination would be good.'

These decision support the view which we are inclined to take in the present case namely that the nature and degree of defective character should be related to the amount of difficulty involved in tracing out the entry.

26. *Issue 3(c)*.—Having come to the finding that the rejection of the nomination of petitioner Mathra Das was improper we have now to determine if the result of the election has been materially affected by such improper rejection as required under section 100(1)(c) of the Representation of the People Act, 1951. On this point it was accepted by the learned counsel appearing for the respondent that a general presumption arises upon an improper rejection of a nomination paper that the result of the election has been materially affected. There is a long series of decisions in which such presumption has been held to arise and the learned counsel could not refer to any case in which a contrary view may have been taken, and therefore very properly agreed that the presumption may be raised in this case also. The grounds for raising the presumption, generally accepted in all the cases, are that the candidate has been illegally deprived of his right to stand for the election and the electorate is deprived of the right to make their choice out of the candidates including him, and because it is not possible for any one to foresee what the result would have been if the improperly rejected candidate had also been permitted to contest the election.

27. We may also refer to the difficulty of rebutting the presumption and satisfying the Tribunal by legal evidence that in this case the result could not have been materially different. We do not suggest that the presumption above referred to is irrebuttable but refer to the difficulty of proof of circumstances which would be acceptable to rebut it. In this connection we may reproduce the following of quoted observations of Grove J. in *2 O' M. & H. 77* (P. 81). He observed:—

"I cannot see how the Tribunal can by any possibility say what would or might have taken place under different circumstances. It seems to me to be a problem which the human mind has not been able to solve, viz., if things had been different at a certain period that would have been the result of the concatenation of events upon that supposed chain of circumstances. I am unable at all events to express any opinion upon what would have been the result, that is to say, who would have been elected, provided certain matters had been complied with here, which were not complied with".

The difficulty of proving that the result of an election is not materially affected in case of an improper rejection of a nomination has been forcefully pointed out by a Delhi Election Tribunal in a recent decision in *Shri Hans Raj versus Shri Ram Singh* published in the *Gazette of India Extraordinary*, dated 19th November 1952. The Tribunal observed—

"The question according to learned counsel, therefore is, would Shri Ram Singh not have been elected, had Shri Attar Singh been allowed to contest the election. It is sufficient to pose such a question to be at once aware that we are here in the realm of pure speculation. We say this because we cannot conceive of any legal evidence, which could assist us in finding what would have happened, had Shri Attar Singh's nomination not been rejected. Witnesses have of course, been called to say for the respondent that Shri Attar Singh had little or no chance of obtaining any appreciable number of votes, and, on the other hand, on behalf of the petitioner, that he would have nearly swept the polls. These witnesses have merely deposed to their own opinions as to the possible state of the mind of the voters in a contingency, which never in fact arise, and, as we view the matter, these opinions are not evidence of any fact. No increase in the number of such opinions would help either. We are quite clear in our mind, short of holding an election under conditions identical to those contemplated by the rules, there is no conceivable method of discovering

how the majority of the electorate would vote in the particular set of circumstances. We cannot imagine that the Legislature intended that we should resort to conjectures and substitute our opinion without the foundation of any legal evidence for the verdict of the electorate."

28. Some idea of the enormous difficulty of the task of rebutting the presumption may be had from the circumstance that in no reported decision except in the one case, to the exceptional circumstances of which we will presently refer, has it been found that it had been possible for a returned candidate to prove circumstances from which it could be inferred that the result of the election would not have been materially affected.

The solitary case in which the Election Tribunal found that the presumption arising from an improper rejection of a nomination of a candidate had been successfully rebutted is the decision of the Rajasthan Tribunal in *Chander Nath Vs. Kumar Jaswant Singh and others* reported in the *Gazette of India Extraordinary*, dated 20th January 1953. In that case the petitioner's nomination paper was held to have been improperly rejected and the Tribunal also held to the view that a presumption about the result of the election being materially affected does arise, if there is improper rejection. But it considered such presumption to be rebuttable. The Tribunal held the following facts to be proved beyond doubt from which it was inferred that the petitioner was merely a dummy candidate. The facts found proved were:—

- (1) The petitioner was a member of the Congress and the respondents 4, 6 and 7 were also congress members.
- (2) The congress had nominated respondent No. 4 only as its accredited candidate and asked the Returning Officer to give the Congress symbol to him only.
- (3) Respondents 6 and 7 withdrew their candidature as soon as the nomination paper of respondent No. 4 was accepted.
- (4) The petitioner after his nomination paper was rejected actively helped respondent No. 4 in his election.
- (5) Respondent No. 4 had been one of the Ministers in the Rajasthan Government and a prominent Congress-man and yet he was defeated by the respondent No. 1 (the returned candidate) by a margin of over 4,000 votes.
- (6) The Congress High Command had directed the other Congress candidates to withdraw as soon as the nomination papers of their accredited candidates were accepted.
- (7) The petitioner admitted that his election petition was drafted in the congress office and the pleader for the petitioner who filed the election petition at Delhi did not charge him any fee or travelling expenses.

From all the above facts the Tribunal concluded, as it well might, that the petitioner was only a dummy or a covering candidate for respondent No. 4 who was the real congress candidate who had contested and lost. It accordingly held that the presumption was rebutted and the result of the election was not materially affected. The Tribunal further remarked:—

"If the petitioner had filed his nomination papers as an independent candidate and not as a congress candidate then the entire aspect of the case would have been changed and then it may not have been possible for the respondent No. 1 to rebut the presumption."

It is thus clear that it was possible for the tribunal to find the presumption to be rebutted in the very exceptional circumstances of that case in which they could find that the improperly rejected candidate would not have been in the contest even though his nomination had been accepted and there was no question of determining how the electorate would have voted if he also had offered himself to them for their acceptance. Indeed even that Tribunal in line with all other Tribunals seems to have held to the view that a consideration of the chances of success or failure of the candidate whose nomination paper is improperly rejected, cannot be any criterion to determine whether the result of the election has been materially affected or not. In a later case *Shri Bankat Lal Vs. Shri Madan Mohan and others*, Election Petition No. 254 of 1952 published in the *Gazette of India Extraordinary*, dated 3rd February 1953, the same Election Tribunal has held that where the improperly rejected candidate was likely to stand in the election it becomes impossible to find that the result of election had not been materially affected.

"It has been contended by respondent No. 1 that even if the nomination paper of Badri Parsad had been accepted by the Returning Officer, he would have had absolutely no chance of success specially when the contest would have been triangular in view of the number of votes secured by the Respondent No. 1. As a matter of fact it has been settled by the various judicial decisions pronounced in this connection upto this time that the question of success or failure of the candidate whose nomination paper has been rejected cannot be the criterion to determine whether the result of election has been materially affected by the improper rejection of the nomination paper. It will be too much for us to probe into the minds of the electors in order to decide this question as it will be merely a speculation which cannot be based on any definite conclusions".

29. In every reported decision except the one Bikaner Case (Chander Nath Vs. Kunwar Jaswant Singh and others) above referred to, the conclusion has been that the improper rejection of a nomination did result in materially affecting the election which had in consequence to be declared void and there is unanimity of judicial opinion expressed in all the cases including that Bikaner Case that if the improperly rejected candidate was likely to be in the contest upon acceptance of his nomination, there can conceivably be no legal evidence, by which it could be proved that the result of the election would have remained the same, except the holding of a fresh election. In spite of this a mass of evidence has been produced in this case in an attempt to prove what has thus been regarded as impossible of proof the evidence mainly consisting of the opinions of some witnesses—a microscopical percentage of the whole electorate—stating what they think to be the working of the minds of the entire electorate upon the merits of the improperly rejected and the returned candidates. We are not satisfied that these witnesses had the opportunity of studying the minds of the entire electorate or could be depended upon their claims as mental experts to correctly read the possible trends in the working of the other minds towards Mathra Dass's candidature. All attempts at probing into the minds of the electorate through such evidence have been rightly regarded in decided cases as mere speculation upon which the law will not permit us to rely for finding the presumption rebutted. Further the whole approach of the respondent to the problem in this case has been wrong. What we have to see is not whether Mathra Das had good chances of being returned in this constituency but only whether it is shown that in the triangular contest with him in the election, the respondent No. 1 would still have been absolutely certain of being returned and that the votes which Mathra Dass might have polled would not have reduced the votes polled by respondent No. 1 to the extent of bringing him down below the votes secured by the defeated candidate S. Shivdev Singh. The difficulty of proving this would easily appear to be insurmountable when we find that in a constituency of nearly 28,300 voters S. Dara Singh had secured 7,891 out of 15,063 votes polled and only 719 more than the defeated candidate S. Shivdev Singh.

30. In spite of the presumption of law being in his favour Mathra Das led some evidence to point to the possibility of his getting a good support from the electorate in this fight. He sought to show that he was a successful lawyer of Amloh having some clientele in a part of this constituency which was within the jurisdiction of the courts at Amloh, that his family was well known in this area and enjoyed influence through extensive money lending business, that he had applied for the congress ticket from this constituency and had been recommended for it and he would have been accepted as a congress nominee for contesting the election if his nomination had not been improperly rejected, that he had some social service to his credit having worked on bodies like the Municipality of Amloh and the Committee for Rehabilitation of displaced persons and that he had worked amongst Harijans also. He further attempted to make out that in this constituency the Hindu voters were about 15 per cent. of the total and about 25 per cent. were Harijans and he could hope for support of these communities, leaving the other two candidates who were Sikhs the chance of dividing at the best only the remaining percentage of Sikh votes, and that as a congress nominee he had hoped for even a larger support—the only other party in the contest who could claim to have any following being the Akali party of which S. Dara Singh was the nominee who also could not, by the appeal to religion secure all the Sikh votes since S. Shivdev Singh though an independent candidate was there as a Sikh to divide those votes, as he in fact did.

31. On behalf of the respondent No. 1 all the claims of Mathura Dass are contradicted and sought to be shown as unfounded. Witnesses have been examined to state that Mathura Dass is only a mediocre lawyer while in contrast to him S. Dara Singh had been a lawyer of some repute who came to be appointed as a Public Prosecutor and later a Sessions Judge in the erstwhile Nabha State, that Mathura Dass if he was on some public bodies was there as a nominee of the Government, that he did no public work or social service, that he had not been a congress man, that the congress party was not going to set up any candidate in

this constituency, that his family had neither fortune nor any influence and he was living separate from his father and brothers, that the Congress had no following in this constituency, that the percentage of Hindu voters was only 10 per cent. and of Harijans only about 15 per cent. of the total and of the latter about half were Sikh Harijans, that in this constituency there is no communal feeling and Hindus, Sikhs and Harijans are living in amity, that Mathra Dass was never a serious candidate, and was in fact helping S. Shivdev Singh in his candidature and election and that if he had remained in the election, he would have failed miserably.

32. The mass of evidence which we said has been produced in this case is much to the above effect. We do not propose to refer to the evidence on either side in detail or to discuss the merits and credibility of the witnesses because we are clear in our minds that this is all to no purpose. As a consequence of the election a number of persons get ranged on the side of each candidate, and it is not difficult to find from amongst them persons who are prepared to give such opinion evidence without fear of being directly contradicted upon it or of running the risk of an exposure for perjury. No definite data can be constructed upon such evidence as will help us in reaching a conclusion that Mathra Dass had no chance of securing any votes in the election. We will refer to two or three matters to illustrate how the evidence is unhelpful.

33. We have been referred to the evidence of Nathu Lal R.W. 11, Norata Ram R.W. 12 and Dayal Dass R.W. 15, who have stated that Mathra Dass had no intention of contesting the election and that he had filed his nomination with the idea that he might get a chance of being returned unopposed if it happened that the nominations of all other candidates were rejected and perhaps he was prompted by greed and had an idea of bargaining and making some money out of this business. The suggestion is that his idea was to withdraw on getting a price for it from another candidate. Nathu Lal who is a petition writer and who sits in the lawyer's office of Mathra Dass to follow his own profession wants us to believe that Mathura Dass was quite loudly thinking in this manner and that he could know his thoughts because he was always so near to him in his office. It is not stated which of the other candidates was likely to buy him out like this. All this evidence appears to us to be without any foundation in fact and quite untrustworthy.

34. The above mentioned witnesses and several others were made to say that Mathura Dass was not a serious candidate or that he was mixed up with S. Shivdev Singh. We have already pointed out that though there may be some reason to think that Mathura Dass is being helped by S. Shivdev Singh in the prosecution of this election petition we cannot find anything to show that there was any kind of understanding between Mathura Dass and Shivdev Singh before the result of election was out. We should rather think that Mathura Dass was regarded as a serious candidate and therefore his nomination was objected to and its rejection was procured upon the ground of a trivial defect which the Returning Officer seemed all too willing to make most of. This opposition was obviously for the reason that Mathura Dass was offering as a candidate on behalf of the congress party—a party which had to be reckoned within the election in any constituency though its influence in this particular constituency may not have been to the extent of a good prospect of the party's candidate being returned. That influence is not to be negatived entirely upon a statement of respondent's witnesses that people in this constituency are not Congress-minded. Mathura Dass had asked for the symbol of "two bulls with yoke on" as his first preference because he wanted to be the candidate of the congress party. There was some delay in the Congress Central Parliamentary Board in reaching a decision whether a candidate should be set up in this constituency or not. Mathura Dass was the only candidate recommended by the State Parliamentary Board. (Vide evidence of Onkar Chand P.W. 5 and Shri Jaggan Nath P.W. 12). But before any decision was reached in the Central Parliamentary Board the nomination paper of Mathura Dass was rejected and there having remained no other congress man as a nominated candidate in this constituency it became unnecessary to reach a decision about sponsoring one by the congress party. On behalf of the respondent two reports appearing in the Newspaper Tribune of October 26th and November 22nd 1951 have been exhibited which state that the congress party had not decided to contest a seat in this constituency. We have not been shown who were the correspondents who had supplied that information to the Newspaper and what the basis for their report was. So far as the evidence before us tends to go, we find that Mathura Dass had good reason to hope for being adopted as congress party candidate if his nomination paper had been accepted and in that position he could not be expected to withdraw at the instance of S. Shivdev Singh or S. Dara Singh. We are not thus satisfied either that he was not a serious candidate or that he was likely to withdraw in favour of any other candidate and to drop out of the election. We do not believe that Mathura Dass had in any way helped S. Shivdev Singh in the election.

35. The statement of the witnesses that the people in this constituency are not inclined to think in terms of communities leads up nowhere because if it is intended to show that Mathura Dass could not count upon securing votes to the extent of the percentage of Hindu votes (caste and Harijans) it might as well be relied on his behalf to say that he could count upon many Sikh voters also to support him. On behalf of the respondent himself a poster Ex. 1-R/1 has been produced from which it appears that there was some feeling in the congress circles that in the absence of any congress candidate in the contest some congress men were working for and likely to vote for the Akali party candidate. The poster was issued to inform such people that disciplinary action would be taken against them for thus being helpful to a party which was in opposition to the congress. This, if anything, may show that even votes of some congress minded persons which Mathura Dass as a congress candidate might have hoped to secure, were suspected to be going in favour of S. Dara Singh.

36. What we have said above is not to be understood as our finding upon the evidence that Mathura Dass would surely have secured votes of persons belonging to one party or this community or that. What we desire to stress is that such evidence is quite inconclusive and unhelpful to show how the election would have proceeded if Mathura Dass had been in the contest. Considering all the matters as have been urged on behalf of the respondent we are not able to find that Mathura Dass on the acceptance of his nomination paper was likely to eliminate himself from the election, and with him in the contest we are unable to find on such evidence that it was impossible for him to reduce the votes secured by Dara Singh and to what limited extent only he could have reduced them. The presumption being in his favour it was for the respondent to prove that even with Mathura Dass in the opposition, he could be still sure of securing the highest votes so as to rebut the presumption. This the evidence produced cannot be accepted to make out, and we must therefore find that the result of the election has been materially affected by the improper rejection of Mathura Dass, nomination.

37. *Issues IV and VI.*—Upon these findings we have to declare upon the petition as it is, that the election is wholly void. Since the rejection of the nomination is not shown to have been consequent upon any objection taken by the returned candidate the petitioner cannot be allowed any costs against him. We accordingly declare that the election in the Bhodson constituency is wholly void and that the parties should bear their own costs as incurred.

(Sd.) V. B. SARWATE, *Chairman.*

(Sd.) RAGHUNANDANSARAN, Member.

(Sd.) E. M. JOSHI, Member.

The 5th March 1953.

[No. 19/70/52-Elec.III.]

**S.R.O. 582.**—Whereas the elections of Shri Hira Singh Pal, son of Shri Parshottam Ram Pal, of village Domehar, Pargana Pobar, Tahsil Arki, District Mahasu, Himachal Pradesh and Shri Ram Das, son of Shri Jai Ram Das of village Hatt, Pargana Takrola, Tahsil Solan, District Mahasu, Himachal Pradesh, as members of the Legislative Assembly of the State of Himachal Pradesh from the Solan Constituency of that Assembly have been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Hari Das, son of Shri Gosaun of village Khanol, Pargana Kunhar, Tahsil Arki, District Mahasu, Himachal Pradesh:

AND WHEREAS the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission:

Now, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order.

ELECTION TRIBUNAL, HIMACHAL PRADESH, SIMLA.

ELECTION PETITION No. 79 OF 1952

Shri Hari Das—*Petitioner.*

*Versus*

Shri Hire Singh Pal, Shri Ram Das and 8 others—*Respondents.*

## JUDGMENT

This case relates to the double-member Solan constituency of Mahasu District in Himachal Pradesh. There were 11 candidates, who are parties to this case. The scrutiny of nomination papers took place on 17th October 1951. Nomination paper of only one candidate namely Shri Gopal Chand, respondent No. 7, was rejected. The three other candidates, however, subsequently withdrew their nominations, they being Shri N. N. Mohan, Shri T. L. Kriplani and Shri Jagdish, respondents Nos. 8 to 10. Polling took place on 24th November 1951 and 25th November 1951. Result was published in the Gazette of India, dated 20th December 1951 and Shri Hira Singh Pal respondent No. 1 was declared elected to the general seat and Shri Ram Das respondent No. 2 to the seat reserved for scheduled castes. Shri Hari Das, who was the Congress nominee for the general seat, presented this Election Petition, dated 25th March 1952 before the Election Commission on 1st April 1952. The Congress nominee for the reserved seat was Shri Keshav Ram respondent No. 6. This respondent as well as Shri Jagdish respondent No. 10, who withdrew his nomination, filed written statements practically supporting the petitioner. The case was contested jointly by the two successful candidates, respondents Nos. 1 and 2.

Shri Hira Singh Pal, respondent No. 1, was admittedly General Secretary of the Himachal Pradesh Congress Committee till October 1951. Even as such, he was refused a Congress ticket, which he had applied for, by the High Command. He then stood for election as an independent candidate. Shri Ram Das respondent No. 2 also fought the election as an independent.

Two preliminary objections were raised by the contesting respondents, which were disposed of on 18th August 1952, both the objections being over-ruled. The first objection was to the effect that the petitioner did not appear to have deposited security as required by section 117. On an enquiry, the Election Commission informed this Court that the security had been duly deposited by the petitioner and that the relevant Treasury Receipt for Rs. 1,000 was in the office of the Commission. The other preliminary objection was that the petitioner could not raise the question of illegality of the rejection of the nomination paper of Shri Gopal Chand respondent No. 7 and that it was the said respondent himself who, if he so desired, could do so by an Election Petition. It was, however, found that the petitioner was competent to raise the question, although Shri Gopal Chand himself did not file an Election Petition.

The petition was contested mainly on the ground of alleged corrupt and illegal practices and on the ground that the nomination paper of the aforesaid Gopal Chand candidate was improperly rejected and the same materially affected the result of the election. The other points of difference between the parties would appear from the issues. The Court framed 9 issues on 18th August 1952, while an additional issue, No. 10, was added on 4th September 1952. The onus of the first nine issues was on the petitioner, and that of No. 10 on respondent No. 2.

The following are the issues in the case:—

1. Was the nomination paper of Shri Gopal Chand respondent No. 7 improperly rejected and was the result of the election materially affected thereby?
2. Was the nomination paper of Shri Ram Dass respondent No. 2 improperly accepted for the reasons stated in paragraph 5(II)(1) of the election petition and was the result of the election materially effected thereby?
3. Were the nomination papers of respondents Nos. 5, 6, 8, 9 and 10, or any of them, improperly accepted for the reasons stated in paragraph 5(II)(2) to (6) of the petition and was the result of the election materially affected thereby?
4. Were the withdrawal notices of the respondents Nos. 8 to 10, or any of them, not in the form prescribed and not properly presented? If so, should the notices have been ignored and should the ballot boxes of the said respondents have been placed at the polling booths and what is the effect of this not having been done?
5. Was the election not a free election by reasons of exercise of undue influence by officials, coercion, intimidation and threats of deprivation of land and divine displeasure, referred to in paragraph 5(IV)(a) and (b) of the petition?
6. Was the result of the election materially affected by the alleged corrupt and illegal practices referred to in paragraph 5(V) of the petition and detailed in the list annexed to it?

7. Was the result of the election materially affected by the alleged incidents referred to in paragraph 5(VI) (i) to (xii) of the petition?
8. (a) Did Shri Hira Singh Pal respondent No. 1 file his return of election expenses before the date of the Gazette notifying the result of the election?
- (b) Was the said respondent required under the law to file, with the return of his election expenses, a second declaration as his own election agent which he did not do?
- (c) Is the respondent liable to be disqualified for the reasons referred to in (a) and (b) above?
- (d) Can the objections forming the subject matter of issues 8(a), (b) and (c) be raised by the petitioner when the return of election expenses of respondent No. 1 has been accepted by the Election Commission?
9. Is the petitioner entitled to the declaration prayed for by him, namely that the election is wholly void?
10. Cannot the petitioner question the election of Shri Ram Das respondent No. 2, who was elected from the seat reserved for scheduled castes?

We may point out at the outset that the petitioner has failed to produce any disinterested evidence. He examined 18 witnesses besides placing himself in the witness box (P.W. 19). Leaving aside the four official witnesses (P.Ws. 1, 2, 14 and 15), whose evidence would be referred to in due course, no less than seven were petitioner's own polling agents (P.Ws. 8, 10, 11, 12, 13, 16 and 17). P.Ws. 3 to 5 admittedly went to Arki together in order to support the petitioner. Two more namely Jagdish (P.W. 6) and Keshav Ram (P.W. 9) were two of the defeated candidates, who would gladly make a common cause with the petitioner. Jagdish admitted that he withdrew his nomination and then supported the petitioner. He is also a quota holder of Iron and Steel for Mahasu district, and thus, according to the contesting respondents, dependent on the goodwill of the Congress Government. Keshav Ram (P.W. 9) respondent No. 6 was, as already observed, a Congress nominee for the scheduled castes' seat. Both of them filed written statements practically supporting the petitioner, as has been noticed before. Thus, these two witnesses also cannot be said to be independent. We are thus left with only two witnesses namely Thakar Das (P.W. 7), who was a polling agent for Chinta Mani candidate, respondent No. 4, and Gian Singh (P.W. 18) who was a polling agent for Shri Hira Singh Pal respondent No. 1. The former admitted that a case under section 452 I.P.C. is pending against him at Solan. Therefore, it was remarked on behalf of the respondents that this witness also stood to win favour by supporting the defeated Congress candidate i.e. the petitioner in this case. This remark, however, does not carry weight with the Tribunal. Gian Singh said very little and the petitioner dismissed him with only two sentences. Thus it will be seen that there is practically no disinterested evidence produced on behalf of the petitioner. Moreover, the evidence of the witnesses relating to same facts is not free from discrepancies. Now we shall deal with the issues.

*Issue No. 1.*—This would be dealt with towards the end.

*Issue No. 2.*—The nomination paper of Shri Ram Das respondent No. 2 is attacked on three grounds, vide paragraph 5(II) (1) of the petition. The first is that the constituency was wrongly described as "Solan (reserved)". As was explained by the respondent, reserved was added in brackets only to show that he stood from the reserved seat. Otherwise the name of the constituency was correctly described as Solan. The aforesaid addition within brackets is quite immaterial. On page 118 of the Law of Elections and Election Petitions in India by Pt. Nanak Chand, a case is cited in which the words "Non-Mohammaden Rural" were added to the name of the constituency, as reserved has been added in the present case. The addition "was held to be venial one, which did not invalidate the nomination paper". Reference in this connection may also be made to sub-section (4) of section 36 of the Representation of the People Act, relating to "Scrutiny of nominations", which lays down that "the Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character".

The second objection is that the name of the father of Ram Das was Jagan Das and not Jai Ram Das as shown in the nomination paper, that Ram Das, son of Jagan Das, is no elector and that, therefore, the respondent was not entitled to stand as a candidate. Only one witness besides the petitioner, namely Chet Ram (P.W. 17), who was petitioner's own polling agent, stated that the name of Ram Das's father was Jagan Nath. This is, however, nobody's case, as according to the petitioner, in the petition and also in his statement as P.W. 19. Ram Das's

father's name was Jagan Das. There is no other evidence in this connection on behalf of the petitioner. On the other hand, no less than 8 witnesses were examined on behalf of the respondent, including himself (R.W. 34), stated to the effect that the father of Ram Das was named Jai Ram Das *alias* Jagan Das and that he was better known as Jai Ram Das. The said witnesses are: Nathu Ram (R.W. 12), a resident of Salogra, from which Hat Gaon, otherwise called Hart, the village of the respondent, is only about a mile; Ratti Ram (R.W. 13), whose village adjoins that of the respondent; Shiva Nand (R.W. 21), a *purohit* of the family of respondent; Dr. Ved Parkash Gupta (R.W. 24) of Solan, who stated that he was the family doctor of the respondent; Shlv Ram (R.W. 25) an uncle of the respondent; Amar Nath (R.W. 26), a retired Jamadar of Viceregal Lodge, whose village is only about three furlongs from that of the respondent; Jagat Ram (R.W. 27), a Brahman of the respondent's village and Ram Das respondent himself (R.W. 34). R.W. 12 was no doubt a polling agent for the respondent and some of the other witnesses above named are *purohit*, doctor and uncle etc. of the respondent; but as such they are expected to have a special knowledge of the matter in question. It is not disputed that in the Electoral Roll for *pargana* Takroli, in which village Hart is included, (*vide* serial No. 535) the father's name of Ram Das respondent is shown to be Jai Ram Das and he showed the same parentage in his nomination paper. Most of the respondent's witnesses stated that in *pargana* Takroli there is no Ram Das other than the respondent. This statement has not been challenged. On page 109 of the Law of Elections by Pt. Nanak Chand, a case is cited in which the name of the father of the candidate was altogether omitted in the nomination paper and the omission was held to be not material. It was remarked that "when the identity of a person with the person appearing on the Electoral Roll is not challenged, there does not appear to be any good reason for rejecting the nomination paper". True, that was a case of an Anglo-Indian, still the principle that the parentage, caste, etc., in the nomination paper are intended to ensure the identity of a candidate applies to the present case. Here there is no doubt about the identity of the candidate. Moreover, we find on the strength of the evidence led by the respondent that his father is also named Jai Ram Das which name of his is better known than his other name Jagan Das.

The third objection was that the scheduled caste of the respondent is not mentioned in the nomination paper. This objection was a mistaken one. In the declaration on the nomination paper the respondent is expressly shown to be a "Koli" which is admittedly a scheduled caste in Himachal Pradesh. This objection was consequently waived by the petitioner's counsel in the course of his arguments. It is not disputed that Ram Das respondent is a Koli and thus belongs to a scheduled caste. It may be mentioned that in the objection in the petition item No. 3 of the nomination paper is referred to as being meant for mentioning the scheduled caste. Item or column No. 3, however, is for the father's name; and there is no column for the caste, except that in the case of scheduled caste candidates, a declaration is to be given at the foot of the nomination paper, which was done in the present case. Similarly, regarding objection No. 2 in the petition relating to father's name item No. 2 of the nomination paper was referred to, whereas, as seen above, it is item or column No. 3, and not 2, which relates to the father's name, column No. 2 being for the name of the candidate himself.

Thus, we find that the nomination paper of Shri Ram Das respondent No. 2 was rightly accepted by the Returning Officer and there was no valid ground for which the same should have been rejected, as is suggested by the petitioner, and there is no question of the result of the election having been materially affected by any improper acceptance thereof. We find on issue No. 2 against the petitioner.

*Issue No. 3.*—The relevant matter appears in paragraph 5(II) (2) to (6) of the petition. Items (2) and (3) relate to the nomination papers of Shri Phagu Ram respondent No. 5 and Shri Keshav Ram respondent No. 6, both of whom were scheduled caste candidates. The petitioner says that their nomination papers should have been rejected because it was not clear whether they appointed themselves or some other persons as their election agents. There is no substance in this objection. As the nomination papers would show, the printed word "myself", was not scored off, thus showing that they appointed themselves as their election agents. The objection was not pressed.

The objection regarding the nomination papers of Shri N. N. Mohan, Shri T. L. Kriplani and Shri Jagdish respondents Nos. 8 to 10 is that while in their nomination papers, they named the persons whom they appointed as their election agents, yet as they did not fill up Form 5-A prescribed for the purpose by rule 11-A on 10th September 1951 and as no acceptance by the agents named was shown, the nomination papers should have been rejected. Netra Mani the election Qamungo for Mahasu



district, a witness for the petitioner himself (P.W. 2), stated that the aforesaid forms did not appear to have been received and no candidate filled up the same. He also rightly added that on the nomination paper there was no column or space provided for the acceptance of the election agent. Even the petitioner is not stated to have filled up the Form 5-A. Moreover, it has not been shown that the Form 5-A was to be filled with the nomination paper. In any case, this objection regarding the nomination papers of the aforesaid three respondents need not detain us any longer, because these very three candidates withdrew their nominations, which matter is the subject of the next succeeding issue, to which we shall pass on.

Our finding thus on issue No. 3 is also against the petitioner.

**Issue No. 4.**—It is not contended that the withdrawal notices of the aforesaid respondents Nos. 8 to 10 were not on a proper form. The only objection raised is that the form does not show who presented the withdrawal notices. The Returning Officer wrote on the same the time and date of their presentation, and did not fill up the space after the word "By" where the name of the presenter could have been written. But rule 9(1), chapter I, Part II (Conduct of elections) relating to the notice of withdrawal only requires the Returning Officer to "note thereon the date on which and the hour at which it was delivered"; and, as has been seen, the Returning Officer did fill up both these things. The rule, thus, did not require the name of the presenter to be shown, although it would have been better if this also had been done, especially as a space is provided for the purpose on the form of the notice of withdrawal. The onus, however, was on the petitioner to show if there was any irregularity in this connection; but he did not lead any proof in that behalf. One of the three candidates in question was Jagdish respondent No. 10 who has appeared as a witness for the petitioner (P.W. 6). He stated that he himself filed the notice of withdrawal before the Returning Officer. There is a presumption of regularity of official acts under section 114 of the Evidence Act. We, therefore, presume that the withdrawal notices were presented either by the candidates themselves or by duly authorized persons provided in section 37(1) R.P.A. Otherwise, we presume, the Returning Officer would not have received the withdrawal notices. It has not been contended before us, although this objection was taken in the petition, that the withdrawal notices were not in the prescribed form. We find that the withdrawal notices being on the prescribed form and having been properly presented, they could not have been ignored and there was no question of the ballot boxes of the said candidates being placed in polling booths.

On issue No. 4, therefore, we find against the petitioner.

**Issues Nos. 5 and 6.**—These issues overlap each other and will be disposed of together. In fact, as will be presently seen, issue No. 6 and paragraph 5(V) of the petition, on which issue No. 6 is based, are superfluous.

Sub-paragraph IV of paragraph 5 of the petition runs thus:—

"That the election has not been a free election by reasons of:—

- (a) Undue influence extensively prevailing on the part of various officials interested in Shri Hira Singh Pal respondent No. 1.
- (b) Coercion and intimidation exercised on the tenants by threats held out that if they voted for the petitioner the lands in their occupancy will be taken away from them, and that the petitioner was a pro-Muslim and as such if anybody voted for him he would vote for Muslims and he would incur divine displeasure."

Sub-paragraph (V) of the aforesaid paragraph 5 of the petition runs thus:—

"That the result of the election has been materially affected by the corrupt and illegal practices detailed in the list attached hereto."

Only one list, which is referred to in the aforesaid sub-paragraph (V), was filed with the petition, as an Annexure. Its heading is:—

List of corrupt practices.

By candidate (returned) Shri Hira Singh Pal:

"Obtained and procured the assistance of the under-noted persons serving under the Himachal Pradesh Government for the furtherance of the prospects of his election."

Then follow four names:—(i) Shri Narotam Zalidar, (ii) Shri Het Ram Pal, (iii) Shri Pars Ram and (iv) Shri Nand Lal Pal, Patwari. The official position of Nos. (ii) and (iii) is not given in the list: they were clerks in Himachal Pradesh Secretariat.

On 18th August 1952 on which date issues in the case were framed, the attention of the petitioner's counsel was drawn to the fact that no list giving particulars about the alleged corrupt practices appearing in sub-paragraph (IV) of paragraph 5 of the petition had been filed (because the only list filed with the petition purported to relate to sub-paragraph V). In his statement of the said date, the counsel for the petitioner undertook to file, within three days, "lists giving particulars of the allegations made in paragraph 5(IV)(a) and (b) of the petition". On 21st August 1952, however, the only list which the petitioner's counsel filed contained names of seven other Government servants, with the heading: "The particulars of allegations made in para. 5(IV)(a) and (b) of the Petition are". This list also related, like the first list, to clause (a) only of sub-paragraph (IV) and not to clause (b), no list whatsoever having been filed regarding clause (b). Sub-paragraph (V) referred to "the corrupt and illegal practices detailed in the list". The list, however, referred to the alleged propaganda done by four officials in favour of Hira Singh Pal, respondent, which fell, in fact, under sub-paragraph (IV)(a). No separate "corrupt and illegal practices" under sub-paragraph (V) have been alleged. "Illegal practices" are detailed in section 125 R.P.A. None of these has been alleged, or proved, in the case, to have been exercised by the respondents. Thus, the said sub-paragraph (V) is superfluous and so is issue No. 6 based on it. In other words the said sub-paragraph (V) and issue No. 6 overlap sub-paragraph (IV) and issue No. 5.

Now we have to see the effect of no list and particulars having been filed regarding 5(IV)(b). Under section 83(2) R.P.A. "the petition shall be accompanied by a list.....setting forth full particulars of any corrupt or illegal practices which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practices and the date and the place of the commission of each such practice". If such a list, the filing of which, according to the aforesaid section 83(2), is obligatory, is not filed, the Election Commission could dismiss the petition, *vide* section 85; and if the Commission did not do so, even the Election Tribunal could dismiss the petition under section 90(4). This shows how necessary the law considers the filing of a list giving particulars of alleged corrupt and illegal practices to be. This matter is discussed on pages 380 to 382 of the law of Elections by Pt. Nanak Chand, with reference to numerous authorities. The object of the provision, as is observed on page 380, is "to give the earliest possible notice of the charges relied upon by the petitioner to the respondent and to prevent his being harassed by fresh matter being introduced at later stages". On page 381 it is observed that "evidence should be confined to corrupt practices of which particulars have been filed". On the same page cases are cited where the Commissioners struck off, or refused to consider, the evidence relating to corrupt practices, of which no particulars had been given. Thus, strictly speaking, we are not bound to consider the evidence led by the petitioner regarding the matters alleged in paragraph 5(IV)(b), as no particulars with regard thereto, as required by section 83(2) were ever filed on behalf of the petitioner, in spite of his counsel's attention having been invited to the omission on 18th August 1952 and three days' time, as desired, being allowed for the purpose. We, however, propose to examine briefly the evidence in the case relating to the aforesaid matters.

Paragraph 5(IV)(a) refers to undue influence by officials in favour of Hira Singh Pal respondent No. 1. The original list in this connection, though purporting to be under 5(V), related to this. We shall take up the four items, one by one:—(i) No evidence whatsoever was given regarding Shri Narotam Zaidar, (ii) Regarding Het Ram Pal, who no doubt belongs to the village and brotherhood of Hira Singh Pal respondent, the only evidence was given by P.W. 14, P.L. Gupta that Het Ram obtained four days' leave from 21st November 1951. No direct evidence was, however, given that Het Ram did any propaganda for Hira Singh Pal. Het Ram has appeared as respondents' witness (R.W. 16), and has denied that he did any propaganda. He stated that his son was ill and he remained at home.

(iii) Regarding Pars Ram, K. C. Puri (P.W. 1), an official witness, stated that he i.e. Pars Ram took four days' leave from 3rd October, 1951. Polling took place on 24th November, 1951. Only P.W. 12, also named Pars Ram, who was a polling agent for the petitioner, stated that Pars Ram clerk did propaganda at Bainj Hatti on 24th November, 1951. In the list, he was also alleged to have done so "for about six days before the polling day at various places", regarding which there is no evidence. Pars Ram, clerk himself as R.W. 15, has denied the allegation of the petitioner. We are not prepared to rely on the interested testimony of P.W. 12.

(iv) Nand Lal Patwari, according to the list did propaganda "for about 15 days" in the *ilaqa* and "on the polling days" at Pipul Ghat polling station. Two interested witnesses, namely Padam Singh (P.W. 8), and Mansha Ram (P.W. 11), both of whom were polling agents for the petitioner, said against the Patwari regarding the polling days. Mansha Ram, is also President of the Arki Tahsil Congress Committee. The petitioner was a Congress nominee. Nand Lal Patwari, is said to

have been on polling duty at Piplu Ghat polling station. It is, therefore, improbable that on polling days he would do propaganda for a candidate. Nand Lal has denied the allegation as R.W. 10.

The additional list contained seven names. Strictly speaking, this list should be overlooked, because the first list also related to this very matter of officials exercising undue influence in favour of the respondent and yet the names of the seven officials, appearing in the additional list, were not mentioned in the original list. However, we might briefly notice the evidence relating to the additional list. No evidence at all was led regarding the persons named at Nos. 2, 4, 5 and 6. Regarding No. 7, Sant Ram teacher, the only aforesaid polling agent of the petitioner, Padam Singh (P.W. 8), who also deposed against Nand Lal Patwari, stated that Sant Ram exhorted people to vote for Hira Singh Pal. Sant Ram, as R.W. 29, has denied this.

No. 1 of the additional list is Pt. Ram Sarup, Tahsildar Arki, who was Presiding Officer at Kunihar polling station and No. 3 is his Reader Moti Ram. Evidence regarding both is common. Regarding Pt. Ram Sarup the allegation in the list was: "on 24th November, 1951 at and near about Kunihar polling station". It is noteworthy that in this additional list it is not expressly stated what the various persons named in the list did. Regarding Moti Ram the allegation in the list is "for some days before and also on 24th November, 1951 at Arki and in Kunihar". Two witnesses for the petitioner deposed in this connection. One of them was the aforesaid Mansha Ram P.W. 11, and the other was Keshav Ram (P.W. 9), the defeated Congress candidate of scheduled caste. Keshav Ram stated that the said two officials did propaganda before the days of polling. Regarding Pt. Ram Sarup, there was not even such an allegation in the list. The witness did not say where did Pt. Ram Sarup do the propaganda. He says that Pt. Ram Sarup exhorted voters that they should not vote for Congress but should vote for Hira Singh Pal. It is improbable that the Presiding Officer, who was Tahsildar under the Congress Government, would openly exhort people against the Congress. Mansha Ram said that Pt. Ram Sarup and Moti Ram exhorted people to vote for Pal. This appears to have been hearsay, because he stated that he learnt this when he toured the constituency. In cross-examination he added that Pt. Ram Sarup said so to him also and the witness admonished the Tahsildar, who agreed to desist from that conduct in future and therefore the witness made no complaint against him. It cannot be believed that the Tahsildar would speak against the Congress to the President of the Congress Committee of his Tahsil.

The petitioner himself as P.W. 19, made a general statement against all the officials. It, however, does not appear that all these people did propaganda against him in his presence. It is admitted that in spite of his being a Congress nominee, and as such he could have easily approached the authorities, he made no written complaint against any official. He says that he made verbal complaints, but there is no corroboration even about the alleged verbal complaints. As already observed, the allegation itself is generally improbable that Government servants would dare openly exhort people against the Congress.

The respondents and numerous witnesses produced by them have deposed that no propaganda for the respondent Hira Singh Pal was done by any official. The onus was on the petitioner and we find that he has failed to substantiate his allegations in this behalf. Therefore, we need not detail the evidence of respondents' witnesses in this connection.

It may be noted that three witnesses for the petitioner (P.W.s. 3, 4 and 5), similarly deposed that Sham Singh Forester did propaganda for Hira Singh Pal; but the name of this official does not find a place in either of the two lists. It may be recalled that additional names given in the second list were omitted from the first. The second list deserves to be ignored on that account also.

Now we pass on to paragraph 5(IV) (b) of the petition. As noticed before, no list giving particulars regarding clause (b) was filed and therefore, strictly speaking, the evidence regarding the same is inadmissible. Still we might briefly deal with the same.

The first part of clause (b) alleges threats held out to tenants that if they voted for the petitioner the lands in their occupancy will be taken away from them. Only two witnesses, besides, the petitioner himself, have referred to this matter. The first witness is the aforesaid Padam Singh (P.W. 8), a polling agent of the petitioner. He has alleged such threats having been held out at Piplu Ghat polling station to some tenants who were present there by Nand Lal Patwari. The witness has already been disbelieved with regard to the Patwari. The other witness

Achhru Ram (P.W. 10), who was also a polling agent of the petitioner, stated that at Dhundan Hari Ram polling agent for Hira Singh Pal, told some tenants who were there that if they would not vote for Pal, they would be evicted from their lands. He added that at and around Dhundan landlords are mostly Pal Rajputs. The petitioner himself as P.W. 19, stated that in Bagal *ilaqa* tenants are mostly under Pal Rajputs and that they were threatened as above. This, however, does not appear to have happened in the presence of the petitioner, who makes a general statement. It is important that no tenant was produced to say that he was threatened by anybody. Achhru Ram (P.W. 10), aforesaid named Saudagaru Gandhi and Tiku as three of the tenants who were threatened in his presence, but none of them was produced. He said that it was Hari Ram polling agent of Hira Singh Pal who threatened the tenants. The said Hari Ram (R.W. 20), has denied this. Several other witnesses for the respondent also stated that no such threats were ever held out on behalf of the respondent. So we disbelieve the meagre and interested evidence led by the petitioner in this connection, and therefore we need not dwell on the effect of this allegation.

The second part of the clause (b) is to the effect that it was propagated on behalf of the respondent (This is not expressed in so many words) "that the petitioner was a pro-Muslim and as such if anybody voted for him he would for Muslims and he would incur divine displeasure". It may be mentioned at the outset that none of the witnesses produced in this connection has used these words or words similar to them. While most of the witnesses say that it was propagated on behalf of Hira Singh Pal, that Hari Das petitioner was keeping a Muslim woman and denied with Muslims and Achhuts, for the rest, almost every witness stated differently.

The witnesses who have deposed to this matter are nine in number, besides the petitioner himself. It has already been seen that practically all the witnesses of the petitioner are interested. Lila Das Verma (P.W. 3), Dharam Singh (P.W. 4), and Niram Singh (P.W. 5), mainly stated such propaganda having been done by Sham Singh Forester, whose name as noticed, does not appear in the first or the second list. In several particulars the evidence of these three witnesses, who went together from Simla to Arki to work for the petitioner, is discrepant. Moreover, Lila Das Verma said that the propaganda was that voting for Hari Das would mean bringing in Achhuts Raj; Dharam Singh said that it was that it would destroy Hindu religion, while Niram Singh stated that it was alleged that Hari Das was destroying Hindu religion. Jagdish (P.W. 6), stated that at Solan, two or three days before polling, Rattan Lal and Vaid Madho Ram agents of Hira Singh Pal did propaganda that the petitioner was keeping a Muslim woman and denied with members of scheduled castes and that those who would vote for him would be encouraging such acts. This witness Jagdish is respondent No. 10; he admitted that after withdrawing his nomination he worked for the petitioner. Vaid Madho Ram as R.W. 23, and Seth Shiv Dayal (R.W. 22), both of Solan, have denied any such propaganda. Thakar Das (P.W. 7), stated that Sanatanists did propaganda that Hari Das would make the whole community Achhuts. Padam Singh (P.W. 8), alleged such propaganda on behalf of Nand Lal Patwari and Sant Ram teacher, which has been already disbelieved. Achhru Ram (P.W. 10), alleged this having been done by Hira Singh Pal's polling agent Hari Ram who has denied this as R.W. 20. This witness Achhru Ram was a polling agent for the petitioner. Mansha Ram (P.W. 11), another interested witness, deposed about Nand Lal Patwari doing such propaganda, which has been disbelieved already. Pars Ram (P.W. 12), who was also a polling agent for the petitioner, alleged such propaganda having been done by Pars Ram clerk, which also has been already disbelieved. The words ascribed by this witness to the clerk are novel and unbelievable, they being that Congress itself was a traitor body and that Hari Das was also a traitor. It was reserved for the petitioner himself to say that Hira Singh Pal himself did propaganda against him i.e. the petitioner. This could hardly have been in the presence of the petitioner. Hira Singh Pal and his numerous witnesses have on the other hand stated that no propaganda was done by him or on his behalf against Hari Das. Nand Lal Patwari, Sant Ram teacher, Pars Ram clerk, etc. have also denied this as witnesses for the respondent.

We refuse to rely on the discrepant evidence of interested witnesses produced by the petitioner in this connection. This being so, it is unnecessary to go into the effect of the allegation. It may, however, be pointed out that it would not fall under sub-section (5) of section 123 R.P.A. because it is not alleged that the aforesaid propaganda against Hari Das was false. Hari Das himself as P.W. 19 has stated that he saved Nabi Bakhsh and his wife Mst. Barkat during the communal disturbances of 1947, that Nabi Bakhsh died after polling days, that Barkat is living with the petitioner and his wife and cooks food for them and that he has

been particularly working for the uplift of the Achhuts. Thus, the allegations of his keeping a Muslim woman and his dining with Muslims and members of scheduled castes were not false. The allegations contained in clause (b) of paragraph 5(IV) of the petition, if true and substantiated, might have fallen under sub-section (2) Proviso (a) (i) and (ii) of section 123 R.P.A., and the allegation in clause (a) regarding officials, if substantiated, might have fallen under sub-section (8) of the aforesaid section. The allegation regarding Hari Das's being a pro-Muslim etc. might also possibly come within the purview of sub-section (5) of section 124.

Our findings on issues Nos. 5 and 6 are also against the petitioner.

**Issue No. 7.**—The matter relates to sub paragraph (VI) of paragraph 5 of the petition. It runs: "that the result of the election has been materially affected by the following facts". Then follow 12 allegations. It is significant that the petitioner did not choose even to use the words irregularities or illegalities; he only used the words "facts" while we, in the issue, preferred to use the word "incidents". We shall take up the different allegations one by one:

- (i) "At Chandi polling station the voters from village Cheoni were sent away and not allowed to vote because the name of the village in the Electoral Roll appeared as Sapatu".

Only one witness namely Thakar Das (P.W. 7), has referred to this matter, besides the petitioner himself as P.W. 19. Both of them, however, materially differ. Thakar Das stated that the polling staff turned away voters from Cheoni by saying that they belonged to Cheoni Kamthanu while the official list showed the name of the village to be Cheoni Sapatu. He said that 30 such voters then went away without casting votes and that he knew all of them. But no such voter has been produced. The petitioner (P.W. 19), on the other hand, stated that voters of Cheoni had been told that their votes would be polled at Chandi on 24th November, 1951; that when they turned up there on that day they were told that their voting is for 25th; and that they therefore went away without casting votes and did not come again. Mansa Ram, a retired Subedar, who has appeared as a witness for the respondents (R.W. 5), and whose polling station was Chandi, stated that voters from Cheoni came there and cast their votes and none was turned away.

- (ii) "At Solan Brewery polling station the voters from a whole village were sent away and not allowed to vote".

The village was not named and no evidence has been led regarding this clause.

- (iii) "At Bani (Kunihar) the voters were wrongly informed to come on a different date than fixed for polling and were thus deprived of their right to vote".

No evidence.

- (iv) "Propaganda at Solan Bazar within 100 yards on the election day by loudspeakers was allowed by the officers".

Only Jagdish Mittar (P.W. 6), respondent No. 10, who admittedly worked for the petitioner, deposed about this matter and added that the propaganda was done on behalf of Chinta Mani candidate. Thus, the respondents cannot be blamed for it. The witness added that Hira Lal polling agent for Hari Das made a written complaint about it to the Presiding Officer. Hira Lal has not been produced, nor any such complaint proved otherwise. Seth Shiv Dayal (R.W. 22), and Vaid Madho Ram (R.W. 23), of Solan have controverted the allegation.

- (v) "The polling programme was not duly and properly announced".

Padam Singh (P.W. 8), a polling agent for the petitioner, generally stated that the polling programme was not announced in Arki ilaqa. Lila Das Verma (P.W. 3), and Dharam Singh (P.W. 5), who admittedly went to Arki to work for the petitioner, gave some discrepant evidence in this connection. Petitioner's own official witness Netra Mani (P.W. 2), on the other hand, stated that "due publicity was given to the polling programme relating to different villages by publication in the Gazette, by affixing notices on Tahsils and through Lambardars and Zaildars, etc."

- (vi) "Not holding the polling continuously from 8 A.M. to 5 P.M. but in many stations closing the polling during the day for an hour or so".

Thakar Das (P.W. 7), who deposed regarding item (i) also, said that at Chandi polling station, polling started at 9.30 instead of 8 and was suspended for an hour at noon. In cross-examination he admitted that the suspension was due to the fact that the Presiding Officer etc. rose for lunch. There was nothing wrong in that. Even if, as alleged, the polling started somewhat late, it is not shown that any

voters were deprived of casting their votes on account of the delay: this has not even been alleged. The petitioner himself as P.W. 19. stated that his agent told him that at Solan Brewery polling station polling started at 11. The agent has not been produced.

(vii) "Canvassing within 100 yards on the day of election was allowed at Kunehar polling station."

No evidence.

(viii) "There being no village by the name of Kunehar the fixing of polling station for Kunehar caused confusion and many voters did not know where to go and hence could not vote."

It has been emphasized that Kunehar is not the name of any village but that it is the name of an *ilaga* or *pargana*, corresponding to the old Kunehar State and that the bazar and the palace of the ex-Raja are situate, at a place called Hat Kot. There is hardly any substance in the objection raised. It is proved that the Post-office which is at Hat Kot is named Kunehar. In any case there is no evidence that anyone was misled on that account: no such voter has been produced.

(ix) "The Presiding Officer at Barotiwala took meals with Shri Chintamani candidate."

(xi) "The polling at Barotiwala (Mahlog) took place in the house of Shri Chintamani candidate's father's house."

These two items are connected with each other. Evidence in this connection was given by Bhagat Ram (P.W. 16), and Chet Ram (P.W. 17), both of whom were petitioner's polling agents for Barotiwala polling station. It was however admitted by the witnesses that the polling booth was in that part of the building, belonging to the father of Chinta Mani, in which there was a school; that Chinta Mani himself was not there on the day of the polling; and that the Presiding Officer etc. took their meal in the polling booth. Thus, there is no substance in these objections.

(x) and (xii).

No evidence.

Thus, we find that the incidents alleged in sub-paragraph (VI) of paragraph 5 of the petition are not substantiated and the result of the election was not materially affected by any such incidents. Our finding, therefore, on Issue No. 7 is also against the petitioner.

**Issue No. 8.**—This related to the return of election expenses filed by respondent No. 1. Practically, no evidence was led on behalf of the petitioner in connection with this matter and the issue was expressly given up by the petitioner's counsel in his arguments.

**Issue No. 9.**—This relates to relief and would be taken up last.

**Issue No. 10.**—This is connected with, and depends on the decision of, Issue No. 1. If on issue No. 1 the Tribunal finds that the nomination paper of Shri Gopal Chand respondent No. 7 was improperly rejected and that the same materially affected the result of the election, the question will arise whether the election has to be declared void wholly, including the election of Shri Ram Das respondent No. 2. It is true that Shri Ram Das was elected to the seat reserved for scheduled caste candidates, for which the petitioner was not eligible. Still in a double-member constituency, such as Solan was, every voter has two votes and he is not bound to give one of his votes to a scheduled caste candidate. Section 100(1) (c) R.P.A. expressly lays down that if the Tribunal is of opinion that the result of the election has been materially affected by the improper acceptance or rejection of any nomination, the Tribunal shall declare the election to be wholly void. The reason is that if Gopal Chand had been allowed to stand, it cannot be said what exact effect it would have had on the polling and whether Shri Ram Das or some other scheduled caste candidate would have succeeded. A similar opinion was recently expressed by the Delhi Election Tribunal in re. Shri Suraj Bhan *Versus* Shri Hem Chand Jain, *vide* Gazette of India Extraordinary, dated November 19, 1952, page 2446, Issue 9.

It is true that no corrupt or illegal practice has been alleged against Shri Ram Das respondent No. 2 and the Tribunal has found that his nomination paper was properly accepted. Yet as the law stands, the Tribunal has no option but to declare the whole election void, in case finding on Issue No. 1 is given in favour of the petitioner.

**Issue No. 1.—The nomination paper of Shri Gopal Chand (Exht. P.W. 2/A-23), was rejected by the Returning Officer on 17th October, 1951 in the following words:—**

**"Rejected in view of Article 191(a) of the Constitution. He being an employee of Punjab University not declared ligible (? eligible) to contest by competent authority".**

The remark appears to show a confusion of ideas. Article 191(1) (a) of the Constitution disqualifies a person for membership of a State Assembly, if he holds any office of profit under Government. The Returning Officer did not find that Punjab University was a Government Body. He appears to have thought that the candidate should have obtained permission from competent University authority to contest the election, under University rules, with which, however, he, as Returning Officer, was not concerned.

According to section 17 of the Government of Part C States Act, 1951, in the case of Part C States, such as Himachal Pradesh is, we have to refer to Article 102 of the Indian Constitution instead of Article 191, to find disqualifications for membership of a Legislative Assembly. Article 102 (1) (a) is practically similar to Article 191 (1) (a). They bar a person holding an office of profit under Government from being a member of Parliament, Assembly etc. The counsel for the parties, however, based their arguments, in connection with this matter, on section 7(e) of the Representation of the People Act, which is not inconsistent with the provisions of the Indian Constitution. According to the said section 7(e), a person is disqualified for membership of an Assembly, "if he is a Director or managing agent of, or holds any office of profit under, any Corporation in which the appropriate Government has any share or financial interest". It is common ground that the Punjab University at Solan is a Body Corporate, working under the East Punjab University Act, VII of 1947. It is not disputed that Gopal Chand, who was an Assistant, on the administrative side, in the University, was holding an office of profit in that University. The arguments of the learned counsel for the parties have been directed to show whether or not the Government had any "financial interest" in the University.

Three officials of the University were examined by the parties in this case. The petitioner examined Shri Kishan Chand (P.W. 15), Office Superintendent, Administration Branch. The respondents examined S. Tirlochan Singh (R.W. 31), Assistant Registrar and Shri Jagdish Narain (R.W. 33), Deputy Registrar (Administration). P.W. 15, stated that the University is an autonomous Corporate Body; that the rules and regulations thereof are submitted to the Government for sanction, but otherwise the Government has no hand in the administration and working of the University; and that the employees of the University draw their salaries and allowances from the funds of the University. R.W. 33, stated that the Punjab Government gives an annual grant of about Rs. 4 lacs to the University; that under section 34 of the University Act, the accounts of the income and expenditure have to be submitted to Government for examination and audit; that the University uses service postage stamps; and that the words "On India Government Service" are printed on the postcards and envelopes used by the University. P.W. 15, also stated that the funds of the University are deposited in approved Banks in the name of the University and the Registrar operates the account.

From the aforesaid incidents, the counsel for the respondents would have us conclude that the Punjab Government has a financial interest in the University. In our opinion, however, the suggested conclusion does not follow. The counsel for the petitioner presented the analogy of Municipal Committee working under the Punjab Municipal Act and argued that according to the Act, bye-laws of Municipal Committees have to be submitted to the Government for approval; its accounts, like those of the University, are audited by the department of Local Fund Auditors; and yet a Municipal Committee cannot be said to be a Government Body; in other words, it cannot be said that Government has a financial interest in a Municipality. Reference was made on behalf of the petitioner to a judgment of the Election Tribunal Baroda in the case of Mrs. Hansa Jivraj Mehta, petitioner, who was Vice-chancellor of Baroda University. The Tribunal observed: "The honorarium and allowances received by the petitioner come directly from the University Fund and the fact of Government's contribution to that Fund does not in any way change the source of the petitioner's honorarium and allowances. It has now been conceded by the learned counsel for the first respondent that once the Government's grant reaches the University it loses its character and becomes part and parcel of the University Fund and ceases to be Government money. It is clear therefore that the Vice-chancellor does not draw her "profit" from the Government of Bombay." (See Gazette of India Extraordinary, dated August 23,

1962, page 2011). Mrs. Hansa Mehta lost her case before the Tribunal on the ground that as Vice-chancellor she was appointed or continued by the Government and was removable by the Government and therefore she was deemed to be under the Government of Bombay. That part of her case is irrelevant to the case before us.

It is, however, true that Governor of Punjab is *Ex-officio* Chancellor of Punjab University and it is he who appoints the Vice-chancellor. This also would not show that Punjab Government has a financial interest in the University. As regards the appointments under the University, other than those of the Chancellor and Vice-Chancellor, it was stated by R.W. 33 that they are made by the University and not by the Government. Termination of services etc. also rest with the University. It is a matter of Postal Rules that service postage stamps are used by Punjab University. It would appear from paragraph 354 on page 148 of Postal Guide that Vice-chancellors and Registrars of various Universities including Punjab are entitled to use service postage stamps for public business of University.

Somehow, the parties' counsel, in the course of evidence in the case, limited their attention to the Punjab Government. Section 7(e) R.P.A., on which the counsel for both the parties based their arguments before us, however, refers to "the appropriate Government", which term is defined in section 9(1) (a) as meaning, "in relation to any disqualification for being chosen as or for being a member of the Legislative Assembly or Legislative Council of a State, the State Government". From this it would appear that the appropriate Government in the present case would be Himachal Pradesh Government, as the matter relates to election to Himachal Pradesh Legislative Assembly. It has not even been suggested, to say nothing about no proof having been given that Himachal Pradesh Government has any financial interest in the Punjab University of which Shri Gopal Chand was an employee. If the appropriate Government were considered to be the Government of India, even that Government is not said to have financial interest in Punjab University. R.W. 33 stated that "the Government of India also has no hand in the affairs and working of the Punjab University."

R.W. 31 referred to Resolution No. 32 of the Syndicate of the (United) Punjab University, Lahore, passed on 9th November 1945, according to which full-time employees of the University on the administrative side could not contest Assembly and Municipal elections. The same witness himself added: "So far as I am aware, the aforesaid resolution has not been adopted by the present Punjab University at Solan". Even otherwise, we are not concerned with the question whether under any rules of the University, Gopal Chand was or was not required to obtain permission of the University for contesting the Assembly election. For aught we know, he might have taken the necessary permission, if needed, after his nomination paper was accepted. We have only to look to the Constitution or the Representation of the People Act to judge whether or not Gopal Chand was disqualified for standing as a candidate to the Himachal Assembly. It has been seen that under the same he was not disqualified, and consequently we find that his nomination paper was illegally rejected by the Returning Officer. He was not holding any office of profit under any Government; nor has any Government got any share or financial interest in the Punjab University. Now remains the question of the effect of the improper rejection of Gopal Chand's nomination. A good deal of evidence was led by the parties with a view to elucidate this matter. Several witnesses for the petitioner stated that Gopal Chand was a candidate of the Socialist Party; that that Party was doing propaganda for him; and that after the rejection of his nomination paper, the Party worked for Shri Hira Singh Pal respondent No. 1. Some such witnesses for the petitioner are P.W. 3, P.W. 6, P.W. 7, P.W. 13, P.W. 15 and P.W. 17, besides the petitioner (P.W. 19). Numerous witnesses for the respondents, on the other hand, stated that Gopal Chand had nothing to do with the Socialists and that Socialists did not work even for Hira Singh Pal respondent. Many said that they never heard even the name of Gopal Chand. Some such witnesses were: Shri Dina Nath "Andhi" (R.W. 11) "Organiser" of Himachal Pradesh Socialist Party at Simla, Balak Ram (R.W. 3) and Mohan Lal (R.W. 4), President and Secretary respectively of the Socialist Party at Kunihar, where alone, in Solan constituency there was said to be an office of that Party. Shri Dina Nath "Andhi" also stated that the Party adopted two candidates from two other constituencies in Himachal Pradesh and both lost. All this was meant to show that even if Gopal Chand's nomination paper had not been rejected, he had no chance of success at the election, because he was not known, especially in the rural area. It was stated that leaving aside the town of Solan, the rest of the constituency was rural.

It is, however, in evidence that there were about 350 to 400 adult employees of the Punjab University and many of them had other adult members of their families as well, living at Solan. Gopal Chand belonged to West Punjab and it was stated by R.W. 33 that "most of the University employees are displaced



persons from West Punjab". This witness, at one place in examination-in-chief, stated that University employees were generally pro-Congress. In cross-examination, however, he said that that was only his impression; and that he did not particularly collect any data in that connection. He also stated that no propaganda was carried on by the University employees for the Congress.

Many witnesses for the respondents stated that they did not see any propaganda being done on behalf of Gopal Chand in the *ilaqa*. Shri Hira Singh Pal, respondent himself, however, stated as R.W. 35: "My election propaganda started after the acceptance of my nomination paper". The nomination paper of Gopal Chand was rejected on 17th October 1951. Polling took place on 24th November 1951 and 25th November 1951. Thus, there were 1½ months available to Gopal Chand and his friends for doing his propaganda, if his nomination paper had not been rejected. Gopal Chand might well have expected a large number of votes in his favour from the electors of the University Colony. The colony is situate at Solan and some other votes from Solan town might also have gone to Gopal Chand, with the assistance of his University friends. In spite of the denial of Dina Nath "Andhi", Mohan Lal and Balak Ram, Socialists, we find that Gopal Chand, in his nomination paper, chose as his symbol a 'tree' and after the word 'tree' he wrote within brackets 'Socialist Party'. This shows that he had some understanding with that Party. As he was out of the field and admittedly after his election Hira Singh Pal respondent joined the Socialist Party, the aforesaid gentlemen of that Party have come forward to say that Gopal Chand had nothing to do with them and that they did not even support Hira Singh Pal. Their object naturally is that the Socialist Hira Singh Pal should not be unseated and therefore they cannot but say what they have stated, in Party interests. No value therefore can be attached to their testimony in that connection.

It was indeed unnecessary for us to go into the evidence of the parties to see in what manner the result of the election was affected by the improper rejection of the nomination paper of Gopal Chand, in view of the law on the matter, as it stands. On page 416 of the Law of Elections by Pt. Nanak Chand it is observed as follows:—

"It is now well settled that when the nomination paper of a candidate has been improperly rejected, the ordinary presumption is that the result of the election has been materially affected. The Commissioners in the Agra Case (*Pyare Lal Versus Amba Prasad*) observed 'improper acceptance or refusal of a nomination paper by the Returning Officer in our view is so grave an irregularity that this presumption would require the strictest and most conclusive proof for its rebuttal and it lies heavily on the respondent to rebut the presumption so raised. We do not think that the correctness of the above proposition is open to doubt'".

Several other cases also are cited in the foot note in support of the above proposition. The same observation appears on page 186 of Hammond's Reports of the Indian Election Petitions, Volume I (1920).

This matter was gone into at length by the learned members of the Delhi Election Tribunal lately. The point was involved in three cases before them. In *Hans Raj versus Ram Singh* (Election Petition No. 2 of 1952) they observed as follows:—

"Turning to the authorities, we find that they are all one way and all in favour of the petitioner. We have already said that there are about 35 decisions under the Acts governing this matter before the Representation of the People Act, 1951, was enacted. Some decisions have since been made under the new Act, again in accordance with the previous decisions. There is thus a continuous and unbroken chain of judicial precedent to support the contention that the improper rejection of a nomination must necessarily lead to the conclusion that the result of the election has been materially affected and, therefore, the avoidance of the election." (See page 2453 of the Gazette of India Extra-ordinary dated 19th November 1952).

On page 2446 of the same Gazette, the same Tribunal observed as below in another of the three cases, namely *Suraj Bhan Versus Hem Chand Jain*:—

"We find that the matter is very largely concluded by authority. The words in the previous statutes governing this matter were identical to the words employed in the Representation of the People Act, 1951, Section 100, sub-section (1), Clause (c), and a review of the previous decisions, beginning with the Rohtak case (Indian Election Petitions, 1920, by E. L. L. Hammond, Volume 1, page 183) decided in 1921,

and going right upto the present time, unmistakably shows that the moment a nomination is improperly rejected, the result of the election is to be deemed to be materially affected."

It is certainly not necessary to show that Gopal Chand had a good chance of success if his nomination paper had been accepted. It would be a matter of conjecture and speculation for us at this stage to try to find what would have been the result of the election if that other candidate was also in the field. This speculation would not be permissible, nor practicable. The whole electorate was entitled to exercise their vote in respect of various candidates, including Gopal Chand if he would have been one of them. It is also immaterial that in most other cases the candidate, whose nomination paper was rejected, was himself the petitioner. The principle would remain the same, even though Gopal Chand himself has not chosen to prefer an Election petition.

We, therefore, find on issue No. 1 in favour of the petitioner and hold that the nomination paper of Shri Gopal Chand candidate was improperly rejected by the Returning Officer and that the result of the election has been materially affected thereby.

**Issue No. 9.**—This relates to relief. In view of our findings on issues Nos. 1 and 10, we allow the petition and declare, under section 100 (1) (c) of the Representation of the People Act, the election to the Himachal Pradesh Legislative Assembly from the double-member constituency of Solan in Mahasu District to be wholly void.

In view, however, of the fact that findings on all the other issues, including those regarding alleged corrupt and illegal practices, have been given against the petitioner and the respondents are, in no way, to blame for the improper rejection of the nomination paper of Shri Gopal Chand, on which the fate of this case hung, we leave the parties to bear their own costs.

#### ANNOUNCED

(Sd.) J. N. BHAGAT, *Chairman.*

(Sd.) TEJ SINGH VAIDYA, *Member.*

(Sd.) DAULAT RAM PREM, *Member.*

The 7th March, 1953.

[No. 19/79/52-Elec. III.1

**S.R.O. 583.**—Whereas the election of Shri Abul Barkat Ataul Gani, of Menja Shah Jalalpur, Village and Post Office Kotwali, District Maldah, as a member of the Legislative Assembly of West Bengal, from the Kaliachak North constituency of that Assembly has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Majibbar Rahman Chaudhury Mukhtar, Sadar Criminal Court, District Maldah, West Bengal State;

AND WHEREAS the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

#### BEFORE THE ELECTION TRIBUNAL, WEST BENGAL

ELECTION PETITION No. 120 OF 1952

ELECTION CASE No. 4 OF 1952 OF WEST BENGAL.

CORAM

Sri S. C Ray Chaudhuri, M.A., LL.B.—*Chairman.*

Sri M. N. Gan, M.A., LL.B., Sri Sudhir Kumar Bhose, M.Sc., LL.B.—*Members of the Tribunal.*

In the matter of an Election Petition under Section 81 of the Representation of the People Act, 1951 (Act XLIII of 1951).

AND

In the matter of Majibbar Rahman Chaudhury, Mukhtar, Sadar Criminal Court, District Maldah—*Petitioner.*

Abul Barkat Ataul Gani, Manja Shah Jalalpur, Village and Post Office Kotwall, District Maldah—Respondent.

FOR PETITIONER—

Sri Nirmal Chandra Chakraverty, Sri Samarendra Nath Dutta—*Advocates*.  
Sri Kamal Krishna Nag—*Pleader*.

FOR RESPONDENT—

1. Sri Harendra Nath Roy Choudhury,
2. Sri Birendra Nath Roy Choudhury,
3. Sri Naresh Ch. Ganguli,
4. Sri Sarat Ch. Jana,
5. Sri Bankim Roy—*Advocates*.

### JUDGMENT

The election to the State Legislative Assembly of West Bengal from Kallachak North Single member Constituency in the district of Maldah has been called in question under Section 81 of the Representation of the People Act, 1951. There were only two rival candidates who had been validly nominated. The Election Petition has been presented by the defeated candidate Majibar Rahman Chaudhury. The Polling was held on 12th January 1952 and the result was notified in the Calcutta Gazette on 14th February 1952 declaring the Respondent, Abul Barkat Ataul Gani as duly elected.

The election of the Respondent has been challenged contending that there has not been a free election by reason that the corrupt practice of undue influence has extensively prevailed at the election and that the result of the election has also been materially affected by the major corrupt practice of obtaining or procuring of assistance from prohibited persons as set out in Section 123(8) of the Representation of the People Act, 1951. Since the date of his nomination till the date of polling the Respondent is said to have made speeches and issued leaflets masquerading himself as a "Bar-at-Law", which, in fact he is not. The Respondent is further said to have addressed the Muslims who constitute a large portion of the electorate in the strain that if they voted him to the State Legislature he would see to the inclusion of the Muslim majority portion of the District, viz. Kaliachak, in Pakistan. In his election campaign he procured the assistance of the Head Master of the Government aided Junior Madrasa at Sujapur and of the Head Pandit of the Government Free Primary School at Nawada Jadupur for the furtherance of the prospects of his election and thus brought himself within the mischief of Section 123(8) of the Representation of the People Act, 1951. The conduct of the Respondent has been alleged to be nothing short of fraudulent tricks and devices amounting to undue influence within the meaning of Section 123 (2) of the Representation of the People Act, 1951, as the propaganda made by the Respondent or by his agents actually interfered with the free exercise of the electoral right of a majority of the electors in the Constituency whereby the result of the election has been materially affected.

A list of the particulars of corrupt practices by way of addressing meetings at different places on different dates has been given with the Election Petition.

There are prayers for declaration that the election of the Respondent, Abul Barkat Ataul Gani, is void under Section 100(1)(a) or Section 100(2)(a) of the Representation of the People Act and for further declaration under Section 101(b) that the Petitioner has been duly elected, as but for the votes obtained by the Respondent by corrupt practices the Petitioner would have obtained a majority of the valid votes.

The Respondent contests the case traversing all material allegations of undue influence. He admits that two leaflets were printed in which his designation was mentioned as "Bar-at-Law" through the mistake of his employee who was in charge of the publication of the said leaflets, but their circulation was stopped as soon as he noticed that mistake while he was in an extreme corner of the Constituency and issued fresh leaflets contradicting the statement that he was a "Bar-at-Law" and apologising to the electors stating the real position. The allegation of addressing Muslims who constitute a large portion of the electorate in the strain that if they voted for him to the State Legislature he would see to the inclusion of the Muslim majority portion of the District, viz. Kallachak in Pakistan, has been stoutly denied. The further allegation that he obtained or procured the assistance of the Head Master of the Government aided Junior Madrasah at Sujapur and the Head Pandit of the Government Free Primary School at Nawada Jadupur for the furtherance of the prospects of his election has been said to be utterly false and malicious. The

particulars of corrupt practices as given in the list attached to the Election Petition have all been traversed challenging the prayers of the Petitioner for declarations under Section 100(1)(a), Section 100(2)(a) and Section 101(b) of the Representation of the People Act, 1951.

The following Issues arise for decision.

#### ISSUES

(1) Was there a free election or was the election vitiated by major corrupt practices of undue influence extensively prevailing at the election within the meaning of Section 100(1)(a) read with Section 123(2) and Section 123(8) of the Representation of the People Act, 1951, and also by the minor corrupt practices within the meaning of Section 124(5) of the said Act?

(2) Has the result of the election been materially affected on account of alleged major and minor corrupt practices?

(3) Can the election of the returned candidate be declared void?

(4) What relief, if any, is the Petitioner entitled to?

#### DECISION

**1st Issue.**—The election is challenged mainly on the ground that there has not been a free election on account of a false propaganda by addressing meetings and issuing leaflets describing the Respondent as a "Bar-at-Law", which he is not. Such propaganda is said to have interfered with the free exercise of the electoral right of voting by the electors.

Both the Petitioner and the Respondent applied for Congress nomination. The Petitioner was selected as the Congress nominee. He fought the election with the Congress ticket. He is a Mukhtar by profession, practising at Maldah town. He has got landed properties and he commands popularity and respect in the Constituency. He is also a member of the District Board and is said to be a philanthropic man taking interest in the welfare of the people.

The Respondent belongs to a highly respectable family of Kotwalir Mia Sahebs. His father, Khan Bahadur Abul Hayat Khan, is a big popular Zamindar of much influence in the locality, who has charities and public activities. The Respondent is a Graduate and he has got foreign education for five years. He left for England in 1946, but failing to qualify himself as a Barrister went to Geneva in November 1946 to study International Power Politics and remained there for 3 years. He returned home in April 1951 and commenced helping his father in managing Zamindari affairs. In his application for nomination as a Congress candidate he stated that he is a B.A. and he had been in Bilat (foreign country or Europe) for 5 years. Failing to obtain Congress nomination he stood as an Independent candidate for election.

For his election propaganda at first two leaflets were issued,—one of big size and another of small size. In the big leaflet Ext. 1, his qualifications were stated in the body to the effect that in addition to his legal education he studied for 4 years international Politics in the International Institute at Geneva. At the bottom of the leaflet his designation was given as "Bar-at-Law". In the small size handbill, Ext. 2, the attention of the electorate was invited to the alleged directions of the President Rajendra Prasad and the Prime Minister Nehru that the electors should cast their votes in favour of the deserving candidates irrespective of their party affiliations. At the bottom of this leaflet also the Respondent was described as "Bar-at-Law". Such leaflets were admittedly issued but the Respondent contends that their circulation was stopped after distribution of about 150 copies as soon as he noticed that his designation was incorrectly given as "Bar-at-Law" by his Manager, R.W. 1, Surendra Nath Roy Chaudhuri, without his knowledge. In paragraph 5 of the written statement the Respondent averred that "on or about the 2nd week of December 1951, two leaflets, one big sized and another small sized were simultaneously issued on behalf of the said respondent when he was at an extreme corner of the Constituency and as usual the Respondent sent two drafts of the said leaflets to the press for publication through an employee of the Respondent." Then in para 8 of the written statement it was further stated, "that at the bottom of the said two appeals the word "Bar-at-Law" was put by the side of the name of this Respondent and when some of the leaflets came out from the press for circulation it was brought to the notice of the respondent that the word "Bar-at-Law" was added by the side of the name of the Respondent by mistake and the circulation of the said leaflets were immediately stopped under instructions from the said Respondent". In the written statement it was not specifically stated that the Manager, R.W. 1, Surendra Nath Roy Chaudhuri was placed in charge of printing the leaflets. The said Manager now comes to take the responsibility on his shoulder for insertion of the word "Bar-at-Law" under the name of Abul Barkat Ataul Gani.

In the two leaflets, Exts. 1 & 2. His story is that on 13th December midnight Barkat Gani Sahib gave him the drafts of the leaflets instructing to go through them and make necessary corrections before giving them to the press for printing. On the 14th December morning he took the drafts to the press and gave the order to print the leaflets after making correction. He inserted the word "Bar-at-Law" at the press, in the presence of the press-man R.W. 5 Manotosh Govind Dev, in the leaflets as he had an impression that Barkat Gani Sahib was a Barrister. He placed an order to print 4,000 copies of big and 8,000 copies of small leaflets in all 12,000 copies, pressing for delivery on the next day positively, but on the next morning he received in all 500 copies of the two varieties and proceeded to meet Barkat Gani Sahib in his Mufassil camp at Char Babupur directing the Pressman to give delivery of all the remaining copies of leaflets on the following day. The Respondent Barkat Gani Saheb gives a story that the Manager reported to him on the 12th December that the leaflets of the other candidate were being distributed extensively and the people were clamouring for his (Barkat Saheb's) leaflets, accordingly he drafted two leaflets very hurriedly,—of course, taking time till the midnight of the 13th December—and handed over the drafts to the Manager advising him to correct any mistake, if found in them. He asked the Manager to bring the printed leaflets by the 15th December. 4,000 copies of the big variety and 8,000 copies of the small variety. The Manager returned to him on 15th evening with the printed leaflets and informed that he got delivery of only 500 copies of which 150 copies were distributed and the rest were brought to him. The Respondent became very much displeased as there was the mistake, he being described as "Bar-at-Law". He rebuked the Manager for committing such mistake and destroyed the leaflets forthwith. He wrote a letter to the Pressman clarifying the whole position and sent separate draft to be printed as addition to the original two drafts. He adds that he did not write the expression, "Student of International Politics, Geneva Institute" under his name as printed in leaflets, Ext. 1, but he did not object to such insertion as he already stated in the leaflet that he was such a student. We have already noticed that it was stated in the written statement that the leaflets were issued on or about the 2nd week of December. Attempt is now made to prove through the Manager that he distributed only 150 copies on his way to Barkat Gani Saheb's camp at Charbabupur on 15th December, i.e., about one week later, and handed over the remaining 350 copies to the Respondent. The Petitioner, however, has produced 195 copies of the leaflets, 65 of the big variety and 130 of the small variety, which he collected from the Constituency. The Manager took the new draft with Barkat Saheb's letter to the Pressman on the 16th December and on 18th December evening he went to Barkat Gani Saheb again with 12,000 copies of the new leaflets. Copies of the said new leaflets, Exts. B & C, have been produced. The Pressman, R.W. 5, Manotosh Govinda Dev comes to support the story of the Manager and produces an Order Form Book and a Register of the Press, as also the letter addressed to him by Barkat Gani Saheb, and the drafts of the original leaflets. Much comment has been made by the learned Advocate for the Petitioner about these documents referring to certain discrepancies and improbabilities. At the outset it is contended that if the printing of the original leaflets as ordered had not been completed by the 16th December, there could not be any reason to break up the original composition which was still standing and to recompose for the new sets of leaflets the same matter. First two paragraphs of the original leaflets, Exts. 1 & 2, are identically the same as the first two paragraphs of the corrected leaflets, Exts. B & C. In the new leaflets, Exts. B and C, an additional paragraph has been printed to apologise for insertion of the word Bar-at-Law under the name of the Respondent in the original leaflets. Halting explanation has been given by the Pressman to explain why fresh composition became necessary to print the new leaflets when the original composition was still standing. The Manager, R.W. 1, says that on 16th December when he delivered the letter and the corrected draft to the Pressman, the latter became very much displeased as he complained that he had already printed the leaflets and enquired who would pay the expenses incurred when the order was cancelled so late. The Manager appealed to the Pressman for remission of the charges as he was a poor refugee and he would have to bear the expenses from his own pocket, if the Pressman insisted on payment; so, out of pity the Pressman agreed to charge nothing for the original printed leaflets. It seems improbable that the Press would forego the costs actually incurred. The Compositors and the printers had to be paid. The papers were supplied. And above all old compositions were broken up and fresh compositions of the same matters had to be made, incurring further additional costs. There was direction to the Pressman by the Manager to print all the original leaflets forthwith when he took delivery of 500 copies on the 15th December. The Pressman, Manotosh Govinda Dev says later that he only printed 500 more copies and destroyed them by burning under the direction of the Manager. It is argued that the story of printing only 500 copies more and burning them is wholly a myth and that while the old composition of the original matters of the leaflets were standing, the Pressman could not recompose for the new leaflets in ordinary course of business and the only reasonable inference would be that the whole lot of 12,000 copies of the original leaflets were printed

and the original compositions were broken and that the new leaflets were printed making new compositions before the submission of the account of election expenses when it was already in the air that election petition would be filed. The Letter Ex. I purported to have been written by the Respondent to the Pressman, Manotosh Govinda Deb gives a direct lie to the story of delivery of only 250 copies of each of the two varieties of leaflets on 15th December to the Manager. Barkat Gani Saheb wrote "my man took delivery of 500 (Five hundred) copies of each specimen of the handbills which you have printed on the order placed by my Manager (Surendra Nath Roy Choudhury)." It is a matter on which some comment may reasonably be made whether "my man" referred to in this letter and "an employee", mentioned in paragraph (5) of the written statement, could at all mean the Manager, Surendra Nath Roy Choudhury. If those expressions could not refer to the said Manager, the whole evidence of P.W. 1 Surendra Nath Roy Choudhury loses its value. Curiously enough the letter, Ext. I, written by the Respondent to the Pressman does not bear any date. At the right hand top corner of the letter under "Charbhapur Camp" there appears the letter "D". It seems that the date was not written there after writing the letter "D", on purpose. The Pressman produces Exts. G & G(1) as the original drafts in which the Manager wrote the word "Bar-at-Law" under the name of Abul Barkat Ataul Gani as stated by him and corroborated by the Pressman. The draft begins with 'Bhrata O Bandhugan'. From Ext. 1 we find that the leaflet, as printed, is addressed to 'Bhrata O Bhagnigan'. Under the word Bar-at-Law, alleged to have been written by the Manager there is further addition of the expression "Kotwalir Mia Sahib". That expression, it is contended, appears to be written by the same hand. It is brought to the notice of the Tribunal that if 'Kotwalir Mia Sahib' had been written in the draft originally, there could not remain any intervening space to write the word "Bar-at-Law" subsequently. Of course, without the opinion of the hand-writing expert, the question whether "Bar-at-Law" and "Kotwalir Mia Sahib" are written by the same hand or not, cannot be usefully discussed. There is a further addition at the bottom of the leaflets Ext. 1, to the effect, "Student of International Politics, Geneva Institute". This expression does not appear in the draft Ext. G. The Manager R.W. 1 Surendra Nath Roy Choudhury gives no explanation for such addition. R.W. 5. Manotosh Govinda Deb introduces in cross-examination a new story that "on the 14th December evening when I was examining the proof of the big leaflets, Manager Surendra Babu was present there and he asked me to add the expression "Student of International Politics, Geneva Institute". I wrote the expression in the proof copy on the verbal statement of Manager Babu who did not write it out in the original. The proof copy has been destroyed." The said expression was omitted from the new big leaflets Ext. B, although the respondent Barkat Gani Saheb did not give any such instruction. His answer in cross-examination on the point in his own language runs thus "so far as International Student of Politics is concerned, he (Manager) could ask Manotosh Deb, the Pressman to put that thing because I have already said in my leaflets as Student, probably I have forgotten to put it". It is further pointed out by the learned Advocate for the Petitioner that in the original leaflets Ext. 1 the name of "Barkat" was spelled without any vowel after "Ka", whereas in the small leaflets, Ext. 2, the name was spelled with a vowel "Aa". In both the alleged original drafts Exts. G & G(1) the vowel does not appear. Regard being had to all these discrepancies and apparent inconsistencies it is seriously contended that Exts. G and G(1) could not be the original drafts and the new leaflets were subsequent publications brought into existence in collusion with the Pressman to set up a plausible defence to counteract against the apprehended mischief caused by the original leaflets and false propaganda masquerading the respondent as a 'Bar-at-Law'. Attention has been invited in this connection to the Bill Forms Nos. 541 and 542, marked as Exts. E and E(1) and to the entries in the Register Ext. F. The binding of the relevant pages of the Register appear to be loose and written in a different ink. Two orders placed on different dates appear to be successive. Dates of prior orders written on the two previous pages, of which the binding is loose, appear to have been changed, there being double writings. There is no note against Order No. 541 of Ext. F why the order was cancelled and when it was cancelled. No advance was taken when the original order was placed. Against the next order No. 542 there are notes of advance of Rs. 30 and final payment of Rs. 147 without mention of any date. In the Bill Form Ext. E the date of cancellation of the order was noted as 16th December 1931. The date of delivery was noted as 18th December 1931, in this Form and also in the next form Ext. E(1). The date of payment was not noted in Ext. E(1) also although in other Forms of the Book dates of payments were noted. The Bill Form Book appears to have been re-stitched very tightly, but the original holes of stitching can be noticed on close examination. There are indeed very suspicious circumstances which support the suggestion of tampering to fit in with the defence case. It was put to the Pressman Manotosh Govinda Deb in cross-examination that the alleged original drafts, the Order Forms, and the entries of the Register were not genuine, but they were created for the purpose of defence in collusion with

the Manager and the Respondent. He stoutly asserted the genuineness of the documents. It is difficult to accept his evidence at its face value. The Respondent gives during trial a long list of the meetings arranged by him after the printing of the new leaflets to explain any misgivings in the minds of the electors on account of the issue of the previous leaflets with his designation as "Bar-at-Law". Such story of holding series of meetings after the correction of the leaflets did not find place in the written statement. The very fact that it struck the Respondent to bolster up such a new story of holding meetings after the alleged printing of corrected leaflets, shakes the very foundation of the case that the original leaflets were not extensively circulated in the electorate. If there had been no circulation there could not arise any necessity of attempting to offer explanation to the electorate. Ordinary election campaign would naturally have been continued till the date of Polling. The Respondent fights shy in admitting that he convened election meetings in January 1952 just before the election, evidently because the Petitioner makes out a case that the Respondent continued his propaganda describing himself as "Bar-at-Law" right up to the date of Polling.

All these facts and circumstances disclosed from the evidence, make the defence story of publication of 2nd set of leaflets, Exts. B and C, from the 20th of December, 1951, and the discontinuance of circulation of the originally printed leaflets, Exts. 1 and 2, improbable. Of course, in his petition for Congress nomination, Ext. 3, the Respondent did not describe himself as a "Bar-at-Law", and that fact was known to the Petitioner who had occasion to see that petition at Maldah District Congress Office during the Congress nomination. It may not accordingly seem very probable that he could stand by without making any protest when the Respondent masqueraded as a "Bar-at-Law", and allow the electors, if at all, to be so unduly influenced as to cause interference with the free exercise of the electoral right of voting. This matter will be considered in connection with the question of undue influence.

However, in connection with the question of propaganda, let us briefly refer to the evidence regarding the meetings. The Petitioner has given a long list of meetings held from the last part of December till the date of Polling. It is an admitted fact that there was a meeting at Fatekhani, which was addressed both by the Petitioner and the Respondent. The Petitioner gives the date of the meeting as 7th or 8th January, 1952 while the Respondent takes it back to 24th December 1951. The President of that meeting was R.W. 7, Haji Mohammad Ibrahim, Head Pandit of the Government Free Primary School, at Nowada-Jadupur. The Petitioner first addressed that meeting and then left the place. R.W. 8, Kalimuddin Ahmed who attended that meeting admits that "Talebali Mia said that there were two candidates, one a Mukhtar and another a Barrister." R.W. 2 Md. Talebali, the principal agent of the Respondent, in his evidence on the point, states that he placed the claim of Barkat Gani Saheb in the Fatekhani meeting and spoke against the candidature of the Petitioner. According to him Majibar Rahman Chaudhury stated in that meeting that Barkat Gani Saheb could not pass Barristership examination and was not a better candidate than himself. The Respondent, Barkat Gani Saheb, (R.W. 9) contradicts his witness No. 8, Kalimuddin saying that Talebali did not say in that meeting that he was a Barrister. No useful purpose will be served by discussing the mass of conflicting evidence regarding the meetings. The Respondent comes to say that after receiving the new leaflets, Exts. B and C, he commenced his election propaganda from 20th December 1951 and held six successive meetings—viz. first at Char Babupur on 20th December 1951, second at Sujapur on 21st December 1951, third on 22nd December 1951 at Mothabari, fourth at Gangaprosad on 23rd December 1951, fifth at Fatekhanl on 24th December 1951 and the last at Nowada-Jadupur on 29th December 1951. The date of polling was 12th January 1952, but instead of continuing the election campaign by holding meetings, he wants the Tribunal to believe that he suddenly changed his *modus operandi* and started approaching the electors personally. The electorate is a big one consisting of several Unions. The number of voters was not less than 50,000. It is difficult to believe that instead of arranging for mass contact in meetings, house to house campaign only for so many days before the actual polling, was at all probable. The Petitioner has examined witnesses to prove the holding of meetings and distribution of the leaflets (Exts. 1 and 2) by the Respondent or his agents up to the date of polling. The respondent totally denies that he held Sujapur meeting on 28th December 1951, Charbabupur meeting on 29th December 1951, Noornagar Mosque meeting on 26th December 1951, Joteparam Free School meeting and Nowada Jadupur meeting on 7th January 1952, Dariapur Primary School meeting, Krishnapur Hanifa School meeting and Dakshin Debipur meeting on 8th January 1952, as alleged by the Petitioner. As regards his Fatekhani meeting he, of course, gives the date as 24th December 1951, but he does not specifically deny that a meeting was held there in January 1952 as stated by the Petitioner himself, giving the date as 7th or 8th January and corroborated by P.W. 10 Jamiruddin Munshi who says that on 3rd January 1952 Barkat Gani Saheb first came to canvass in the

locality and held the meeting on a subsequent date. Evidence of distribution of leaflets like Exts. 1 and 2 up to the date of polling has been adduced by many witnesses on the Petitioner's side. The evidence of P.W. 1, Sachindra Nath Misra, who has been returned to the Legislative Council and that of R.W. 3, Kamiruddin Ahmed, Pleader of Maldah, on the point, deserves special notice. They are respectable witnesses, though the former is interested for the Congress Party candidate. The Pleader accompanied the Respondent on 11th January 1952 and visited several villages remaining in the same Tonga and noticed Barkat Ganj Saheb distributing his leaflets (Exts. 1 and 2) in which the word "Bar-at-Law" appeared. The Respondent does not deny that the Pleader accompanied him in his Tonga to the electorate on 11th January 1952. The Pleader went to canvass on behalf of an independent candidate for Parliamentary seat from Maldah Constituency, which includes North Kallachak Assembly Constituency as an unit. There is no reason to disbelieve this gentleman.

A reference in this connection may be made to another election campaign of the Respondent in Panchanandapur Camp of his father R.W. 6 Khan Bahadur Abul Hyat Khan. There was an assemblage of the local people in the camp. Khan Bahadur cannot recollect the date but he makes it clear that the incident took place towards the end of December 1951. The leaflets Exts. 1 and 2 were seen there by him and the Manager (R.W. 1) showed him also the new leaflets (Exts. B and C) when he advised the Manager to correct the mistake—referring to the designation "Bar-at-Law"—in the original leaflets. In the election petition there is reference of propaganda at Panchanandapur. P.W. 4 Purna Chandra Mandal, Secretary of the Thana Congress Committee and President of the Panchanandapur Circle Praja Sangha, gives the date of the meeting at Panchanandapur camp as 8 or 10 days before the election where the comparative merits of the two candidates were enumerated and the Respondent was set up as a Barrister. P.W. 5 Khairuddin Biswas, Vice-President of Paranjpur Union and Sardar of "Churashi Mandal" (84 villages of 4 unions) corroborates the evidence of P.W. 4 Purna Chandra Mandal. In the interest of his son, the Respondent, P.W. 6 Khan Bahadur Abul Hyat Khan could not apparently state the whole truth regarding the nature of the propaganda made to influence voters.

Considering all these evidence and the circumstances and probabilities there can remain no manner of doubt that the leaflets (Exts. 1 and 2) were distributed up till the date of polling and the new leaflets (Exts. B and C) were subsequently brought into existence and were not circulated as alleged in defence to counteract against any impression that was created by the propaganda that the Respondent was a "Bar-at-Law".

Now, the most important questions in this case are whether the propaganda describing the Respondent as a "Bar-at-Law" amounted to major corrupt practice of undue influence directly or indirectly interfering or attempting to interfere with the free exercise of the electoral right to vote, within the meaning of Section 123(2) of the Representation of the People Act, 1951, and whether such corrupt practice extensively prevailed at the election to bring the case within the mischief of Section 100(1)(a) of the said Act?

We cannot but strongly condemn the conduct of the Respondent for such a false propaganda announcing that he had higher personal qualification. Such statement might not *per se* be actionable. He started the election campaign late as is clear from the evidence of both sides. The Congress election campaign already commenced from 24th November soon after the Petitioner obtained the Congress nomination. The Manager (R.W. 1) impressed on the Respondent that the Respondent's case was going by default. Necessity for an immediate and effective election campaign was realised to be of topmost urgency. The Respondent studied law in England and had foreign education for a considerable period. In his application for Congress nomination, Ext. 3, he mentioned that he was a B.A. and had foreign education for 5 years. He had no previous political or public activities to his credit. His rival, the Petitioner, who got the Congress nomination is an experienced Mukhtar having social activities and reputation as a public man. It is quite probable that some device was deemed necessary for the Respondent to attract the imagination of the voters of the rural constituency, a large section of which are Muslims, in order to give a good fight against the experienced rival. The qualifications of the Respondent stated in the body of the big leaflets (Ext. 1) were substantially correct. In the leaflets, Ext. 2, they were not repeated. At the bottom of both the leaflets under the name of the Respondent the designation "Bar-at-Law" was printed. Such leaflets were distributed up to the date of polling. The attempt of the Respondent to establish a case that all reasonable means were adopted to remove any incorrect impression about his personal qualifications by circulation of fresh



leaflets before the election, has failed. Besides the circulation of the leaflets, posters were affixed, of big and small sizes, within the electorate to attract the notice of the voters to the candidature of the Respondent. In those posters only the name of the Respondent as an independent candidate was exhibited. The personal qualifications of the candidate are indeed one of the great means of influencing votes in his favour. A person with higher personal qualifications is bound to carry a greater weight with the voters. It is to be considered whether as a matter of fact the false exaggeration of the personal qualifications of the Respondent could carry a greater weight with the voters: or in other words, whether there was any direct or indirect interference or attempt to interfere with the free exercise of the electoral right of voters. None of the two candidates is a man of outstanding personality. The Petitioner is an experienced Mukhtar who is better known to the electorate. He is a member of the District Board. He is a Zaminder and has reputation for his good character, philanthropic disposition and public activities. Above all he being the Congress nominee had the strong backing of the party in power. The Respondent, on the other hand, is an inexperienced young man unknown to the electorate. He had no public activities whatsoever. But he comes of a very respectable family. His father is a big Zaminder and a Khan Bahadur well known to the electorate for his public activities. He (Respondent) is a Graduate of the Calcutta University and had foreign education for 5 years. Failing to secure Congress nomination he offered himself as an independent candidate and had no party backing. He was falsely described as a "Bar-at-Law" in his election propaganda. It was highly improbable that the Petitioner would not contradict such false propaganda. Referring to the application for Congress nomination the Petitioner could very well draw the attention of the electorate to the false claim. The Respondent has adduced some evidence of protest by the Petitioner in meetings against the false propaganda that the Respondent is a "Bar-at-Law". The electors had before them all these facts to form their judgment. It is common knowledge that a person of ripe political experience, good education and a keen student of human nature, who has to his credit records of good past services is likely to attract a larger number of votes than a person who is devoid of these qualifications. The family of Kotwalir Mia is very well-known in the Constituency. The fact that the Respondent did not qualify himself as a Barrister could not remain unknown to the entire electorate, part of which is within the Zamindery of his father. What could be the nature and effect of the alleged undue influence in these circumstances? There was no question of any physical interference or compulsion. The election was held according to the directions of the law. There was secret voting. The electors could exercise their right according to their sweet will unnoticed and undisturbed by anybody. If there could be any undue influence working in the minds of the electors or any psychological effect interfering with their free judgment is a matter of inference from circumstances. The Petitioner can claim relief under Section 100(1)(a) if the corrupt practice of undue influence extensively prevailed, interfering with the free judgment of the electors. Attempt has been made to prove that the Congress candidate expected to sweep the poll as the verdict of the electorate was ascertained in several meetings before the Respondent appeared in the field with the false propaganda that he is a "Bar-at-Law". It may be remembered that the Respondent did not bank on such false propaganda alone. His respectability, his foreign education, his father's influence were not inconsiderable factors which the electors had before them to form their judgment. The Congress was not universally popular as is clear from the evidence on Petitioner's side. There was some ugly demonstration when P.W. 1, Sachindra Nath Misra went to canvass and feel the pulse of the electorate just on the eve of the election on 11th January 1952. It is an admitted fact that in two other constituencies, viz., two-membered Maldah Constituency and Gazole Constituency within the District, the Congress candidates were defeated. The result of the poll in North Kaliachak Constituency does not justify any inference that the false propaganda of the Respondent worked as a magic and turned the scale by sweeping the poll on account of extensively prevailing corrupt practice of undue influence. The Petitioner polled 8,184 votes and the Respondent 10,428 votes, the latter securing a clear majority of 2,244 votes. An analysis of Accounts of Ballot papers showing the number of valid votes polled in each booth by the Petitioner and the Respondent will disclose on comparison that in several stations the Petitioner managed to secure majority while in many others the Respondent was leading. Both the candidates are Muslims and a large section of the voters are also Muslims. The Petitioner had his personal influence and the influence of the strong party behind him. The Respondent had his family backing and the advantage of his foreign education in addition to his B.A. degree. After his return from Europe the Respondent managed his father's Zamindery remaining in his Mofassil home. He never pretended to be a practising Barrister. The Indian Law of Election makes publication of any false statement regarding a rival candidate a major corrupt practice under Section 123(5) of the

Representation of the People Act, 1951. It does not, however, make the publication of any false statement of a candidate's own personal qualification a corrupt practice, specifically. When under the general law such publication or propaganda can come under the head of "undue influence" within the meaning of Section 123(2) of the said Act, it can only attract the operation of Section 100(1)(a) of the Act.

In the present case judging from all the points of view we cannot hold that the false propaganda of "Bar-at-Law" did as a matter of fact interfere with the exercise of the electoral right of voting. The Tribunal accordingly holds that the propagation of the mis-statement about the personal qualification of the Respondent though highly objectionable, did not in the eye of law constitute a corrupt practice within the meaning of section 123(2) of the Representation of the People Act, 1951 and as such no order can be made under section 100(1)(a) of the said Act.

Corrupt practice as set out in Section 123(8) of the Representation of the People Act, 1951, has been pleaded. R.W. 2 Md. Talebali, the Head Master of the Government-aided Sujapur Junior Madrasah worked as the principal agent or canvasser of the Respondent admittedly. R.W. 8 Haji Md. Ibrahim, Head Pandit of Government Free Primary School presided in an election meeting at Fatekhani. It is contended that there was major corrupt practice under Section 123(8) of the Act as these teachers being Government servants gave assistance for the furtherance of the prospects of the Respondent's election, at the instance of the Respondent. These teachers can hardly be regarded as Government servants in view of the evidence. The teacher of an aided school cannot by any stretch of imagination be deemed to be a Government servant. Free Primary School is managed under the directions of the District School Board. The teachers do not enjoy the privileges of Government servants. Besides, Haji Md. Ibrahim only presided in a meeting which was addressed by both the Petitioner and the Respondent. The evidence discloses that he held the balance evenly. He did not render any assistance for the furtherance of prospects of the Respondent's election. This objection is accordingly overruled.

Although there is the issue relating to minor corrupt practice as defined in Section 124(5) of the Representation of the People Act, 1951, no evidence has been adduced on this question. There is no case under the said Section.

**2nd Issue.**—This Issue has been raised in connection with an objection in the election petition under Section 100(2)(a) of the Representation of the People Act, 1951. The law lays down (a) that if the election of a returned candidate has been procured or induced by corrupt or illegal practice, or (b) that the result of the election has been materially affected by any corrupt or illegal practice, the Tribunal shall declare the election of the Returned candidate void. During arguments the learned Advocate for the Petitioner has further invoked the aid of Section 100(2)(b), which refers to the commission of the corrupt practice by the Returned candidate or his agent or by any other person with the connivance of the Returned candidate or his agents, to have the election declared void.

The Tribunal has come to the conclusion that there has been no corrupt practice, in the eye of law and the result of the election has not been materially affected. This Issue is accordingly answered in the negative.

**3rd Issue.**—In view of the findings already recorded by the Tribunal the election cannot be declared void either under Section 100(1)(a) or Section 100(2)(a) or Section 100(2)(b) of the Representation of the People Act, 1951.

**4th Issue.**—The election petition will accordingly fail. The Respondent had recourse to a propaganda which was very objectionable. The Petitioner cannot succeed in this case on account of technicalities of law. He should not therefore be made liable for the costs of the Respondent who has not also come with clean hands.

The prayer of the petitioner under Section 101(b) of the Representation of the People Act, 1951 for being declared as duly elected is not tenable in any view of the case.

## ORDER

The Election Petition be dismissed. Each party do bear his own costs.

Dictated by me and corrected.

(Sd.) S. C. RAY CHAUDHURI, *Chairman*,  
Election Tribunal.

(Sd.) S. C. RAY CHAUDHURI, *Chairman*,  
Election Tribunal,  
4-3-53.

(Sd.) M. N. GAN, *Member*,  
Election Tribunal,  
4-3-53.

(Sd.) SUDHIR KUMAR BHOSLE, *Member*,  
Election Tribunal,  
4-3-53.

[No. 19/120/52-Elec.III.]

**S.R.O. 584.**—Whereas the election of Shri Vishnu Ghanshyam Deshpande, as a member of the House of the People from the Guna Constituency of that House, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Lachhi Ram, son of Shri Ratanmal Jain, Bhilsa, Madhya Bharat;

AND WHEREAS the Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order.

**BEFORE THE ELECTION TRIBUNAL AT INDORE (MADHYA BHARAT)**

**ELECTION PETITION No. 284/52.**

Shri Amarnath Segal, B.Sc. (Hons.), LL.B.—*Chairman*.

Shri R. N. Shingal, B.A., LL.B.—*Member*.

Shri M. B. Rege, B.A., LL.B.—*Member*.

Lachi Ram S/o Ratanmal Jain, Bhilsa—*Petitioner*.

*Versus*

1. Vishnu Ghanshyam Deshpande of Mahkar, Buldhana (Madhya Pradesh),

2. Dev Rao Krishnarao Jadav of Lashkar of Madhya Bharat,

3. Chandraji Rao Sambhaji Rao Angre of Lashkar (Madhya Bharat),

4. Dharma Saroop Saxena of Guna,

5. Gopi Krishna Vijaya Vargiya of Guna—*Respondents*.

Mr. N. H. Dravid, Counsel for the Petitioner.

M/s. S. M. Samvatsar, G. S. Gandhe, G. W. Oak and Niranjan Varma, Counsel for the Respondents.

**JUDGMENT**

This is a petition by Lachhi Ram Elector No. 103 in the Poorak Nirwahan Namawall of Kasba Bhilsa No. 277 ward No. 3 in the Madhya Bharat Electoral Roll for the House of the People. Five candidates were impleaded therein in the first instance and the petitioner while challenging the election of respondent No. 1, Shri Vishnu Ghanshyam Deshpande claimed *inter-alia*, the seat for respondent No. 5 Shri Gopi Krishna Vijayavargiya on the ground that "but for the votes obtained by respondent No. 1 by corrupt and illegal practices Shri Gopi Krishna Vijayavargiya would have obtained majority of valid votes".

The petition was published in the Gazette dated 21st August 1952. On 4th September 1952 Shri Deshpande filed a recriminatory statement alleging corrupt and

illegal practices during the election by and on behalf of Shri Vijayavargiya and with his connivance. On this the petitioner applied on 22nd October 1952 for leave to abandon the claim for the seat for Shri Vijayavargiya and to proceed with the petition to un-seat Shri Vishnu Ghanshyam Despande only. To this there was a demur on behalf of Shri Despande.

On the 27th of October 1952 an application was made by Shri Despande for leave to amend his written statement dated 22 *idem* by the addition of a plea that the petitioner had failed to join one Shri Ratanlal Lahota who had been duly nominated at the election in dispute and that on this ground the petition was not properly constituted. In answer to this the petitioner questioned the propriety of the belated amendment but withal prayed for leave to join the said Shri Ratanlal as a respondent.

On the matters raised by the pleadings and later applications the following preliminary questions arose for determination:—

- (1) Is it necessary under the Representation of People Act to join as respondents even such candidates as had after their nomination, withdrawn from the contest?
- (2) If so, what is the effect of the non-joinder of Shri Ratanlal Lahota as respondent?
- (3) Has this Tribunal jurisdiction to allow an amendment by the addition of a respondent as sought in this case?
- (4) Can the petitioner be permitted to abandon his claim made in the petition for a seat for Shri Vijayavargiya?
- (5) What would be the effect of such abandonment on the petition itself and on the recriminatory statement and proceedings thereon?

Under the scheme of the Representation of the People Act of 1951 there is a provision for nomination of candidates under section 32; and under the 3rd sub-section of section 33 no candidate is deemed to be duly nominated unless the nomination paper is accompanied by the declaration that the candidate has appointed himself or some other qualified person as his election agent. Then comes the stage of scrutiny under section 36 and withdrawal of a candidate under section 37. It is not disputed that Shri Ratanlal Lahota had been duly nominated and that his withdrawal was proper under the provisions of section 37.

Section 38 then provides for publication of a list of "valid nomination". It is clear that there is a distinction made in the Act between a "duly nominated candidate" and one "validly nominated". This is made clearer still by the definition of "A validly nominated candidate" in the Representation of the People (Conduct of Election and Election Petition Rules 1951), Rule 2(i.f.) which defines a "validly nominated candidate" as "a candidate who has been duly nominated, and has not withdrawn his candidature, in the manner and within the time-specified". In this view there can be no doubt that Shri Ratanlal was a "duly nominated" candidate though by reason of his withdrawal his name did not find a place in the published list of "validly nominated" candidate.

Section 82 of the Representation of the People Act enjoins that the petitioner shall join as respondent to his petition, all candidates who were duly nominated at the election other than himself, if he was so nominated at the election and considering the distinction referred to above we have no doubt that it was essential for the petitioner to join the said Shri Ratanlal as a respondent to his petition.

But it was urged by Shri Dravid, learned counsel for the petitioner that the only prayer now made being for un-seating Shri Despande the petition could be decided without having Ratanlal as a party respondent. He sought to make distinction between a necessary and proper party which is of importance in the Civil Procedure Code by which the proceedings of this Tribunal are "as nearly as may be" governed. This we take to mean that the provision of the Civil Procedure Code can be adopted only to the extent that they do not conflict with the special law relating to Election.

Order 1 rule 9 of the Civil Procedure Code provides that no suit should be defeated by reason of the misjoinder or non-joinder of parties and the Court, may in every suit, deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. Were we concerned solely by this provision the contention of the learned counsel for the petitioner would have great force but we cannot ignore the specific provision of section 82 of the Representation of the People Act under which a duly nominated candidate is a necessary party. The Representation of the People Act is self contained in itself, and under it an election petition cannot be considered purely as a matter between the parties on the record but it has to be looked at as affecting the Electorate generally. A cause of action under the Act accrues to the elector even though he may not be

interested as a candidate seeking election; and in this light the mandatory provisions of section 82 cannot be ignored.

Reference was made at the Bar to the cases of Ch. Allah Dad Khan Vs. Soofi Abdul Hamid, Doabia's Indian Election Cases Volume 1 page 63; Hazara Ram Vs. S. Mula Singh (*ibid* page 316) Pandit Mangatram Vs. Ch. Anantram Doabias Indian Election Cases, Volume II, page 80, Ch. Mohammad Abdur Rahman Vs. Mohammad Abdus Salam *ibid* page 223 and Mohammad Shafi Vs. Mohammad Iqbal Ahmad Khan *ibid* page 257 and Mohammad Ally Vs. Jaffarbhoy Doabias Election Cases, Vol. I, page 235. All these cases were decided on an interpretation of the Election Rules in force then. In the first five cases the rule applicable was that if a petitioner in addition to calling in question the election of a returned candidate claims a declaration that he himself has been duly elected, he shall join as respondent to his petition all other candidates who were nominated at the Election." It was held in all the cases that the failure to join all the nominated candidates including such as had withdrawn was fatal to the claim for a seat. The same view was taken in the last case which was one from Bombay where there was a similar provision in the Electoral Rules. There was a further provision that a candidate who had not been joined in a petition claiming a seat for the petitioner, could if he desired insist upon being made a respondent and also recriminate within specified time. The Tribunal held (page 243), "If such a candidate insists on being made a respondent in the manner provided, the omission of the petitioner to join him in the first instance may possibly be cured. And in our opinion that is the only way in which a candidate who ought to have been joined and who has not been joined can become a respondent.

In the present case neither of the candidates who ought to have been joined and who were not joined has complied with the requirements of either rule 34 or rule 40, and even if they claimed to be joined now or were to be ordered by us now to be joined, the joinder could not be made in the manner provided by the rules referred to.

It must, therefore, be held that we have no power to order or permit the joinder of the candidates who were nominated at the election but were not joined as respondents in the petition".

It was contended on the strength of the decision in this case that the claim to a seat was in addition to and separable from the right to challenge the Election of the returned candidate and the non-joinder of Shri Ratanlal would not be fatal to the whole petition. We are clear in the view that by reason of the change in the law which makes it incumbent under section 82 of the Representation of the People Act, 1951, that all duly nominated candidates should be joined as respondents, irrespective of whether a claim for a seat for the petitioner or another candidate is made or not, it is not open to us to look to the provisions of the Civil Procedure Code or other laws regarding the joinder of parties. The contention must therefore be repelled. We hold that Shri Ratanlal was a necessary party and his non-joinder is fatal to the petition.

Mr. Dravid referred to an unreported case in which the High Court of Bombay held that addition of parties could be allowed. The case does in a way support contention of Mr. Dravid but with great respect we find ourselves unable to accept the principle for the reasons discussed above. We would prefer to follow with respect the decision of the Election Tribunal Lucknow reported in the *Gazette of India Extraordinary*, Part II—Section 3, dated 20th December 1952 at page 1034 in the case of Pritam Singh Vs. Charansingh and others which we think is in accordance with the scheme of the Representation of the People Act.

The Bombay case proceeds on the view that the election refers merely to proceedings after the nomination. It has been however, held by the Madhya Bharat High Court that Election begins with the notification calling in the names of candidates. The decision of the Madhya Bharat High Court is in accordance with the view expressed by the Lucknow Election Tribunal and is binding on us.

But the case can be distinguished on another and a very solid ground. In that case the question was only one of unseating the candidate and declaring the election void. The petition did not include a prayer as in the present case, for the seat either for the petitioner or for any other candidate.

Where a seat is claimed for another candidate it becomes a question not merely of the vote of the electors in reference to the elected candidate but a challenge to the Electorate as a whole. Any duly nominated candidate can therefore resist claim to a seat for another candidate on the ground that his withdrawal from the candidature was influenced by the valid nomination of the elected candidate and that but for such nomination he would have contested the seat and been successful. In our view a petitioner cannot after claiming the seat for himself or another candidate put forward the plea that a duly nominated candidate is not a necessary party, even if the provisions or Order 1 Rule 9 of the Civil Procedure Code were held to be applicable.

The question whether the election petition can at any stage be amended is of considerable importance. We have on principles of natural justice given leave in the past for making amendments to correct Clerical errors on matters not affecting the contents of the petition itself. This is on the ground that on matters of procedure pure and simple, it is permissible to allow amendments to further the cause of justice; but we are clearly of the view that where the matter is not one merely of procedure but of substantive law, it is not open to us to allow amendments to the petition. It is of the essence of Law that an Election Petition should be disposed of with as little delay as possible and that the rights of the candidate and electors should be precisely determined when a claim for a seat is made in an election petition, a right accrues to the returned candidate, or other party to recriminate and such a right would be seriously prejudiced if an amendment as sought now were allowed. We, therefore, hold that the petition in this case cannot be amended.

Returning to the question of withdrawal of a part of the claim made in the petition, it must be noted that unlike provision of order 23 rule 1 of the Civil Procedure Code which leaves it to the will of the plaintiff to withdraw the suit without reservation, the Representation of the People Act does not permit a withdrawal of an Election Petition save by leave of the Election Commission or the Election Tribunal. It is not open to the petitioner to withdraw the petition as a matter of right, and it follows that he must make out a case for leave being granted by the Tribunal. We are clear in the view that a withdrawal of an Election petition cannot be permitted as a matter of course, and can be permitted only on good grounds being made out since as we have said before, the matter is not one between the parties on the record, but as between the petitioner and the body of Electors. We therefore refuse leave to withdraw, as in the circumstances above discussed it appears to have been sought purely to avoid enquiry into the recrimination.

The next question is as regards the effect of a withdrawal of the claim for a seat made in the petition, even if it were allowed. It is not necessary for us to consider this matter at length in view of the refusal of leave to withdraw. But we are of opinion that when the petitioner by questioning the propriety of the Election and claiming a seat for himself or another candidate by a properly constituted petition challenges the other candidates and the Electorate, such candidates and the Electorate cannot be deprived of their right to recriminate by the change in the attitude of the petitioner; and the recrimination must be considered as a petition against the petitioner himself. We therefore hold that the withdrawal of the Election petition even if it could be allowed would not effect the rights of other candidates, and therefore, does not *ipso facto* put an end to proceedings on behalf of the respondent to the petition which could rightfully be started as a result of claim made in the petition.

As a result of our findings on the several questions raised in this case we hold that it was necessary for the petitioner to join Shri Ratanlal Lahota as respondent to the petition that the said Ratanlal being a necessary party his non-joinder vitiates the petition and the petition is not therefore properly constituted; that we have no jurisdiction to allow addition of a respondent and that no case has been made out to justify the grant of leave to the petitioner to abandon the claim for a seat for Shri Vijayvargiya.

A recriminatory petition can in our view be considered only, when there is a properly constituted petition, as the petition is the foundation of the recrimination. On our finding, that the petition before us is not properly constituted, the recriminatory petition must also be rejected.

We dismiss the petition with costs, Pleaders Fee Rs. 200. The recrimination fails for no fault of the respondent. We make no order as to costs therein.

(Sd.) AMAR NATH, *Chairman,*  
Election Tribunal, Indore.  
(Madhya-Bharat)

(Sd.) R. N. SHINGAL, *Member,*  
Election Tribunal, Indore.

(Sd.) M. B. REGE, *Member,*  
Election Tribunal, Indore,

The 21st February 1953.

[No. 19/284/52-Elec.III.]

P. S. SUBRAMANIAN,  
Officer on Special Duty.

New Delhi, the 20th March 1953

**S NO 585.—WHEREAS** the election of Shri Krishna Kant of village Patha Tehsil and District Tikamgarh, as a member of the Legislative Assembly of Vindhya Pradesh from the Tikamgarh constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Bhan Singh, resident of Tikamgarh, Vindhya Pradesh;

**AND WHEREAS** the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order on the said Election Petition;

**NOW, THEREFORE**, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

### IN THE COURT OF THE ELECTION TRIBUNAL, NOWGONG, V. P.

#### PRESENT:

1. Shri S. N. Vaish, B.A., LL.B., Retd. D. & S. Judge U.P.—*Chairman*.
2. Dr. L. N. Misra, M.A., LL.B., Ph. D., Retd. D. & S. Judge U.P.—*Member*.
3. Shri P. Lobo, Advocate Supreme Court.—*Member*.

#### ELECTION PETITION No. 36 of 1952.

Shri Bhan Singh s/o Hardeo Singh r/o Tikamgarh.—*Petitioner*.

*Vs.*

1. Shri Krishna Kant.
2. Shri Keshav Dass.—*Respondents*.

#### ORDER

This is a petition under section 81 of the R.P. Act 1951 for declaring the election of the Respondent No. 1 for the remaining seat from the Tikamgarh plural constituency of the V.P. Legislative Assembly to be wholly void. The petitioner contends that he was a candidate for the remaining seat in this constituency and had duly filled up his nomination paper but the Returning Officer wrongfully rejected the same and this wrongful rejection of nomination paper has materially affected the result of the election. The Respondent No. 1 alone contests the petition on various grounds set forth in his written statement specifying particularly non-compliance with the provisions of section 82 of the R.P. Act, 1951 (hereafter to be referred to as the act). The pleadings of the parties gave rise to the following issues:—

1. Was the nomination paper of the petitioner duly and correctly filled up? And has it been wrongly rejected? If so what is the effect?
2. Was the nomination paper of the petitioner defective for want of a separate or proper declaration of appointment of election agent?
3. Had the petitioner made a valid appointment of an election agent?
4. (a) Was the petitioner wrongly entered as a voter in the Electoral Roll and was he not qualified as a voter?  
(b) Can the Respondent challenge, at this stage the petitioner's inclusion in the Electoral Roll?
5. (a) Were the Proposer and Secunder of the petitioner not qualified and were they disqualified from being entered in the electoral roll.  
(b) Can the Respondent now challenge the entries in the electoral roll of the proposer and seunder of the petitioner?
6. Were the nomination papers of the petitioner not signed by the alleged proposers and seconders and were the signatures of the proposers and seconders obtained by any fraud?

7. Was the petitioner disqualified from being a candidate on account of his being a pensioner of the V.P. Government at the time of his nomination?
8. Had the petitioner any share or interest in the Motor Union, Tikamgarh and was this disqualification of the petitioner?
9. Did the petitioner file any false and incorrect return of election expenses and therefore became disqualified from filing and maintaining this petition?
10. Has the rejection of petitioner's nomination paper materially affected the result of the election?
11. Is the petitioner had for non-joinder of necessary parties and as such is it liable to be dismissed?
12. To what relief if any is the petitioner entitled?

#### FINDINGS

*Issues Nos. 1, 4(a), 4(b), 5(a), 5(b) and 6.*—The petitioner has examined himself and one Mohammed Sabbir Khan while the Respondent was a witness for himself along with one Nathu. The evidence on the record shows that the petitioner had filed two nomination papers, Ex-1 and 2, before the Returning Officer. In Ex-1 the proposer is one Seikh Noor Mohammed and the seconder is Abdul Karim, while in Ex-2 the proposer is Nand Kishore and the seconder is Mathoo Lal. The electoral roll on the record shows that in the original roll at No. 1594 the entry reads, Kr. Lan Singh Hardeja (in the column with the heading "name of voter along with that of father or husband"). There is on the record the "Corrigendum No. 2" to the electoral roll of this constituency in which there is the following entry:—

"1595 (Under Sl. No.) Lan Singh Dardeja (under wrong entry) and Bhan Singh Kr. Hardeo Singh (under correction).

In Ex-1 against Sl. No. 8 the petitioner has mentioned "1595 (Tikamgarh) Ward No. 3 (Corrigendum No. 2). At Sl. No. 8 the petitioner is required to specify the number in the list of electoral at which his name appears. No doubt in the original Electoral Roll at No. 1595 there is the name of Chnatrapal Singh (s/o) of the petitioner but in the corrigendum No. 2 aforesaid the entry quoted above and marked Ex-4 by this Tribunal, clearly establishes that the petitioner had correctly given his number from the corrigendum and thus the petitioner was qualified as a candidate. Ex-1 mentions the number of Seikh Noor Mohd. In the electoral roll at 2712 and Seikh Nanoo is the name of the Elector mentioned against that number. The seconder Abdul Karim is mentioned, in Ex-1, as the Elector at No. 3317 of the Electoral Roll. In the Electoral Roll on the record there is a "(.....)" (ditto) after "Abdul Karim" which signifies that Abdul Karim is the son of the same person whose son is Abdul Rahim entered at No. 3316 and the name of the father of that Abdul Rahim is written as "Nahani". The corrigendum No. 2 aforesaid shows that the word **Nahani** in the original list against 3316 had been wrongly written instead of Jahani. The mistake of the father's name against 3316 has been rectified in the corrigendum. Consequently in the original list the father's name of Abdul Karim against 3317 also will now be **Jahani** as Jahani. It is not denied that Abdul Karim is the son of Jahani. Respondent has tried to show that Ex-1 does not appear to bear the signature of Noor Mohd. and Abdul Karim but for this allegation there is only his solitary statement and he admits that he is not a handwriting expert. It is significant that he had not alleged before the Returning Officer that the signatures of Noor Mohd. and Abdul Karim were not genuine. The petitioner swears that Ex-1 was signed by Noor Mohd. and Abdul Karim in his presence. After hearing the learned counsel for the parties the Tribunal is of the opinion that the nomination paper, Ex-1, of the petitioner was duly and correctly filled up and that the proposer and seconder in Ex-1 were qualified as such; also that they had duly signed Ex-1. In the other nomination paper Ex-2, however, the name of the alleged seconder reads as Mathoo Lal, Electoral Roll No. 3404 whereas the Roll at that particular number discloses the name of Nanoo Lal and there is nothing to show that that entry had ever been corrected and hence Mathoo Lal was not qualified to second the petitioner. The validity of one nomination paper, viz. Ex-1 is, however, sufficient.

The Returning officer has rejected the petitioner's nomination paper on the ground that in item No. 1 of the nomination form the petitioner had not mentioned



whether it is the general seat or the reserved seat for which he sought election and on that account he held that the form was not properly filled up. Section 33 of the Act lays down the requirements of a valid nomination. Admittedly this constituency is a plural constituency having two seats one of which is reserved for the scheduled castes. Section 33 provides that in a constituency where a seat is reserved for the scheduled castes, no candidate shall be deemed to be qualified to be chosen to fill that seat unless his nomination paper is accompanied by a declaration verified in the prescribed manner that the candidate is a member of the scheduled caste for which a seat has been so reserved. In the printed nomination form a candidate is required to specify his caste against Sl. No. 6 in case he is a candidate for the reserved seat and the petitioner, in Ex-1, has put a cross against Sl. No. 6 aforesaid. This clearly shows that the Ex. 1 specifies that the petitioner was not a candidate for the reserved seat in this constituency. There is no mention in the Act of any "general" seat. Further, in Ex. 1 the petitioner has crossed the declaration required for a scheduled caste candidate: this clearly shows that the petitioner was a candidate for the remaining seat in this constituency. The Tribunal is of the opinion that the nomination paper Ex-1, was wrongly rejected by the Returning Officer. The Tribunal shall consider the effect of this wrongful rejection when dealing with Issue No. 10.

*Issues Nos. 2 and 3.*—In the nomination paper Ex-1 the petitioner has appointed himself as his election agent in writing; this is permissible in law and so we hold the appointment to be valid and that the nomination paper was not defective on this account.

*Issue No. 7.*—The petitioner is admittedly a pensioner of the Vindhya Pradesh Government as he retired from the post of the Custom and Excise Commissioner of Tikamgarh state in 1947. The Respondent contends that the drawing of a pension by the petitioner from the Vindhya Pradesh Government tantamounts to holding an "office of profit" in the state Government and therefore in accordance with section 7 (c) of the Act he would be disqualified from being chosen as a Member for the Assembly. The term "office" in wider sense, means any position or place in the employment of the Government specially one of trust or authority. Certainly a pensioner cannot be said to hold any office and we are of the opinion that the mere fact that the petitioner has been drawing a pension from the Vindhya Pradesh Government does not make him a holder of any office of profit and consequently he was not disqualified from being a candidate for the Assembly.

*Issue No. 8.*—The statements on oath of the petitioner and his witness Mohd. Sabbir Khan clearly show that there is a Registered Co-operative Society in Tikamgarh known as the Bundelkhand Transport Ltd, and further that the petitioner was a share holder and the Chairman of the Board of Directors of that Society. Section 8(2) of the R.P. Act 1951 provides that nothing in clause (d) of section 7 shall extend to a contract entered into between a Cooperative Society and the appropriate Government. The Respondent has further failed to establish that there has been any contract as such between the Cooperative Society aforesaid and the Vindhya Pradesh Government. The Respondent has also failed to prove that the petitioner was a share holder in any Motor Union of Tikamgarh, which runs stage carriages as contractor and Lincencee from the V.P. Government as alleged by him. We therefore hold that the petitioner was not disqualified under section 7(d) of the R.P. Act 1951.

*Issue No. 9.*—Ex-B is the petitioner's return of election expenses for this constituency. In this return the petitioner has mentioned Re. 1/-/- as spent for the nomination paper. The petitioner had actually presented two nomination papers for this constituency. He states that he had taken one nomination form from a friend of his and as he had spent Re. 1/-/- only in this behalf, he mentioned that sum only in his return. The Respondent's learned counsel contends that this return is false inasmuch as the petitioner has failed to mention Re. 1/-/- as spent for the other form. We hold that even if the petitioner had spent Re 1/-/- for the other nomination form, the return cannot be said to be false in material particulars on account of the omission of a petty amount of Re. 1/-/-.

*Issue No. 10.*—We have already held that the petitioners nomination paper was wrongfully rejected by the Returning Officer. The result of that rejection obviously was that the electors in this constituency were deprived of their right to exercise their vote in favour of the petitioner. The petitioner claims that although he stood as an independent candidate at this election he had the backing of the Congress party. The Respondent however, goes so far as to assert that the petitioner was in truth, a congress candidate. The Tribunal takes Judicial notice of the fact that the Congress Party succeeded in getting the largest number of candidates returned

to the Vindhya Pradesh Legislative Assembly at the last elections. In these circumstances this Tribunal is definitely of the opinion that the result of the election in this constituency has been materially affected by the wrongful rejection of the nomination paper of the petitioner. The issue is, therefore, decided accordingly.

*Issues Nos. 11 and 12.*—In view of the findings on the foregoing issues No. 10 it would follow that the election in this constituency has to be declared to be wholly void under section 100(1) of the Act. The particular constituency we are dealing with, however, is a double Member constituency, one of the two seats being reserved for the scheduled castes. It is not denied that one Rilli was declared elected for the reserved seat in the constituency under section 67 in accordance with the special procedure prescribed in section 54(2) of the Act. The petitioner has not impleaded Rilli as a respondent to this petition and he has prayed for the relief that the election of the respondent No. 1 for the general seat in this constituency to be declared void. The Respondent contends that the petition is bad for non-joinder and that the relief claimed by the petitioner cannot be granted in law. The heading of section 82 of the Act is "Parties to the petition" and the section reads as follows:—

A petitioner shall join as respondents to his petition all the candidates who were duly nominated at the election other than himself if he was so nominated. The petitioner's learned counsel contends that the words 'if he was so nominated' in the section modify all the foregoing contents of that section and hence this section applies only when the petitioner was a duly nominated candidate at the election; that it does not apply when the petitioner is a candidate (like the one in this case) whose nomination paper was rejected by the Returning Officer; or when the petitioner is a voter. The heading of the section shows that the Legislature has incorporated in this section a general provision applicable to all petitions and not only to the petition presented by a duly nominated candidate at the election. Had the latter been the intention of the Legislature, this section would have opened with the clause "If the petitioner is a duly nominated candidate at the election," and then proceeded to mention "he shall join as respondents to his petition all the other candidates who were so nominated". Considering the heading of the section and the juxta position of the words "if he was so nominated" and even according to the ordinary rules of grammar about synthesis etc., we are of the opinion that the expression "if he was so nominated" merely emphasises that if a petitioner happens to be duly nominated candidate at the election he need not join his own self as respondent. We further hold that this petition is hit by section 82 of the Act.

Now under the same section all the candidates who were duly nominated at the election are required to be joined as Respondent to the petition. The term "election" has been defined in section 2(1) (d) of the Act as follows:—

Election means an election to fill a seat or seats in.....either House of the Legislature of a state. According to section 4 of Government of Part C States Act, 1951 each state is divided into constituencies and a number of seats is allotted to each constituency. This constituency being a double member constituency, the election in this constituency would mean the election to the two seats in the constituency. The word "an" before "election" leads to the inevitable conclusion that the Legislature thereby meant "one" or "single" by the use of the indefinite article "an". Thus there was a single election for both seats in the constituency to be made by the electors mentioned in the Electoral Roll of the constituency. The result of the election to both seats in this constituency would therefore be materially affected by the wrongful rejection of the petitioner's nomination paper and it would follow that under section 100(1) of the Act, the election (to both seats) in this constituency has to be declared to be wholly void. The petitioner's prayer for declaring the election of the Respondent No. 1 alone for the remaining seat (called General) seat by the petitioner in this constituency to be void can not legally be granted by the Tribunal.

The petitioner's learned counsel relies on section 54 of the Act and contends that Rilli in this case, was forthwith declared to be elected to fill the reserved seat in this constituency under section 54(2) and, thereafter, the procedure laid down in section 53 was followed for filling the remaining seat in this constituency. A reference to rule 119 of the Representation of People (Conduct of Elections and Election Petitions) Rules 1951 shows that a different period of limitation has been provided for the presentation of an election petition in the case when there are more returned candidates than one at an election and the election petition calls in question (or is legally required to call in question) the election as a whole and such a petition can be presented after the date of publication of the names of all the returned candidates under section 67 (of the Act). The publication of the returns of Rilli and the respondent No. 1 were made under section 67; that the

former in accordance with the provisions of section 54(2) and that of the latter in accordance with section 66 (after the counting of votes). The period of limitation for a petition like this begins to run from the date of the publication of the return of the Respondent No. 1 and not from the date of the publication of Rilli's return. The election to a plural constituency at all times and at all stages remains one whether polls are taken or not for either of the two seats. The special procedure laid down in section 54(2) of the Act could not convert an election to the 2 seats in this constituency into two elections. One for the reserved seat and the other for the remaining seat. We are of the opinion that in spite of the special procedure, the election continued to be the election to the two seats in the constituency.

There is no doubt that the petitioner was bound to join Rilli as respondent to this petition under section 82. The question now arises, what is the effect of this non-compliance on the part of the petitioner with the provisions of section 82, of the Act. Section 85 of the Act provides that if the provisions of section 81, section 83 or 117 are not complied with, the Election Commission shall dismiss the petition. Section 90(4) provides that notwithstanding anything contained in section 85, the Tribunal may dismiss any Election Petition which does not comply with the provisions of sections 81, 83 or 117. Section 98 of the Act provides that at the conclusion of the trial of an election petition, the Tribunal shall make any of the orders specified in clauses (a) to (d) of that section. The Legislature made it mandatory for the Election Commission to dismiss the petition for non-compliance with the provisions of sections 81, 83 or 117 and gave the Tribunal also a discretion to dismiss the petition for non-compliance with any of those 3 sections but made it mandatory for the Tribunal to dismiss a petition only at the conclusion of the trial of the election petition, even, though it finds that the petitioner has not complied with the provisions of section 82. The only inference about the intention of the Legislature that can be drawn under the circumstances is that the Legislature intended that a non-compliance with section 82 should not be fatal to the petition in spite of the use of the word "shall" in that section it meant the provisions of that section to be directory and not mandatory.

Such being the case we feel that under the provisions of the C.P.C. Rilli can be impleaded as Respondent either on the application of the petitioner or by the Tribunal if his presence is considered necessary in order to enable the Tribunal to effectually and completely decide the petition in accordance with the provisions of the Act. But in that event, under Order 1 Rule 10 C.P.C. the proceedings against Rilli shall be deemed to have begun only on the service on him of the summons, and he will be entitled to plead limitation. The petitioner himself has not presented any application for impleading Rilli till now and the time prescribed by Rule 119 (R.P. Rules 1951) has already expired. We feel that it will be no use if the Tribunal, *Suo moto*, adds Rilli as a Respondent at this late stage. The Respondent contends that Nathu whose nomination paper for the reserved seat in this constituency had admittedly been accepted by the Returning Officer on scrutiny under section 36(6), but who had withdrawn within the prescribed time, was also required to be joined as respondent under section 82. Assuming for arguments sake that a withdrawn candidate is a duly nominated candidate at the election for the purpose of section 82, the declaration of the election as wholly void, is not likely to affect Nathu and the Tribunal could grant the relief under section 100(1) behind Nathu's back. Hence we hold that the non-joinder of Nathu is not fatal to the petition.

The Respondent's contention that Amritlal whose nomination paper was rejected by the Returning Officer on scrutiny was also a necessary party has no force inasmuch as a candidate whose nomination paper has been rejected cannot be said to be a duly nominated candidate at the election. We hold that it was not necessary for the petitioner to join Amritlal as a respondent to the petition.

Moreover, when a candidate withdraws his candidature it is obvious that he has no longer any personal interests in the election and the law requires under section 37 that such a notice of withdrawal should be affixed in some conspicuous place in the office of the Returning Officer. Having proclaimed to the world that he has withdrawn his candidature, there is hardly any point in dragging such a candidate to the Election Tribunal under section 82, when he had already relegated his position to that of an elector.

The position, thus, is that the Tribunal is of the opinion that the result of the election in this constituency has been materially affected by the wrongful rejection of the Petitioner's nomination papers and, under section 100(1) of the Act, the Tribunal is bound to declare the election in this constituency to be wholly void. But such a declaration is bound to affect Rilli also, and by the expiry of the period

of limitation, Rilli has acquired the right to represent the constituency in the State Assembly for the reserved seat. The Tribunal cannot deprive him of that right behind his back. Therefore, we hold that the relief prayed for by the petitioner viz. that the election of the Respondent No. 1 to the non-reserved only be declared wholly void cannot legally be granted to him and the relief which the Tribunal could legally grant viz. that the whole election to the constituency is void under section 100(1) cannot be granted behind the back of Rilli for default of the petitioner in joining his as Respondent to the petition within the prescribed time. We, therefore, hold that the petitioner is not entitled to any relief.

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ORDERED

That the petition be dismissed. The petitioner shall pay to the Respondent No. 1 Rs. 100 as cost.

(Sd.) SHEO NARAIN VAISH, *Chairman.*

(Sd.) L. N. MISRA, *Member.*

(Sd.) P. LOBO, *Member.*

**The 20th February, 1953.**

[No. 19/36/52-Elec. III.]

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By Order.

P. R. KRISHNAMURTHY, *Asstt. Secy.*